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THE PLURALISTIC STATE

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The doctrine of the pluralistic state has found its most outspoken advocate in this country in Mr. Harold J. Laski,—an Englishman, recently of Harvard University, and more recently still called back to England to the London School of Economics of the University of London. A number of channels of thought have come together in Mr. Laski's present formulation of the doctrine. Among those in England from whom he received much inspiration and suggestion may be mentioned the late Professor Maitland, and Dr. J. Neville Figgis, as well as Mr. Graham Wallas, and Mr. Ernest Barker.

Professor Maitland's work in this field is closely associated with that of Dr. Otto Gierke in Germany, to the third volume of one of whose works, *Das Deutsche Genossenschaftsrecht*, which Professor Maitland translated, he wrote his famous Introduction in which he stated his own views with regard to the real and truly corporate personality, not only of the state but of other social groupings as well. Another of Gierke's works is *Die Genossenschaftstheorie*, in which it is attempted to show, to quote Dr. Figgis, "how under the facts of modern life the civilian theory of corporations is breaking down on all hands, and that even in Germany, in spite of the deliberate adoption of the Romanist doc-

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trine, the courts and sometimes even the laws are being driven to treat corporate societies as though they were real and not fictitious persons, and to regard such personality as the natural consequence of permanent association, not a mere mark to be imposed or withheld by the sovereign power."[1] Dr. Figgis's main contribution was through his *Churches in the Modern State*, and Graham Wallas's, chiefly in his *Human Nature in Politics* and *The Great Society*. Mr. Barker's theory is found especially in his paper "The Discredited State," published in *The Political Quarterly* for February, 1915.

Among French writers, Mr. Laski probably quotes M. Léon Duguit, for twenty-five years or more professor of law at the University of Bordeaux, as often as anyone. M. Duguit is the author of many works, in which among other things he claims to establish what he terms a juridical limitation on state sovereignty as opposed to the doctrine of the absolute state. The theory of syndicalism in France, also, as well as that of guild socialism in England, has made its contribution to the content of Mr. Laski's thought, and many other influences might be mentioned. Mr. Laski's own main works on the subject, in which he presents a very complete pluralistic doctrine, have been his *Problems of Sovereignty* and more recently his *Authority in the Modern State*.

Closely associated with the pluralistic doctrine in America also, although not in reality identified with it, is the recent work of Miss M. P. Follett, *The New State*. In this, she lays great stress as do the pluralists, on group organization as an important key to modern social and political problems. But, unlike the pluralists, she denies to the separate groupings an isolated sovereignty, while in their interdependence and interpenetration she finds the unifying elements of the one supreme sovereignty of the new democratic state of the future.[2]

The doctrine of the pluralistic state, as can be inferred from its name, stands in opposition to that of the monistic state, which with all that it implies has long been the accepted state theory of political science. The monistic theory found its origin

[1] Figgis, *Churches in the Modern State*, pp. 55, 56.
[2] See especially *The New State*, pp. 282 ff.

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in antiquity, and during the middle ages survived the competition, on the one hand of the "Christiano-Germanic"[3] idea of the liberty and sovereignty of the individual, and on the other of the medieval idea of the essentially federalistic nature of society, until in the sixteenth century it was given by Bodin what has become its classic modern form. The Austinian formulation of the doctrine of sovereignty, to the essence of which, in spite of much adverse criticism as to form, the orthodox political scientist still clings, is but a further and more explicit statement of the theory enunciated by Bodin.

According to the monistic theory of the state and of sovereignty, the state is defined, to begin with, as the political organization of society. But the term political must itself be defined, and by political organization the adherents of this school mean, that organization which may be observed as enforcing its will, in the last analysis, by coercion through the use of physical force. It is to this form of organization, which they find practically universal in society, that they give the name political to distinguish it from other forms of social organization and grouping. On further analysis also they claim to discover, as would obviously be necessary, that the political organization has at its disposal the major physical force of the community, and to the element in the political organization which thus controls the major physical force the name sovereign is given, and its power thus to enforce its will is called sovereignty. This is really only another way of saying that whenever in any organized social grouping there is a factor to which for any reason the possessors of the major physical force are so bound that they respond with their physical power to the call of this controlling factor for assistance in enforcing upon the recalcitrant obedience to its command, there we have a political organization or the state. It will be noted that according to this analysis such enforcement becomes necessary, or seems to the controlling factor to be necessary or desirable, because there are in the community those who oppose its will, and whom it can thereby coerce into obedience.

[3] Gierke, *Political Theories of the Middle Age*, p. 88.

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Of such a political community other characteristics, also, are pointed out by the orthodox school:

In the first place, they affirm, the political organization has a territorial basis; that is the exercise of its coercive power is extended over the people on a given territory, such territory being limited only by the extent of the control exercised by the sovereign power.

Secondly, in a given territorial political organization, they declare, there is and can be only one such sovereign power as they describe; that is they affirm unity as a necessary characteristic of the state. For by their very definition they assert that among the many different bonds that are at all times operating to unite men in society, there is one stronger than the others, to which they give their preference and to which they give their physical support when it is demanded, even though other allegiances may also be demanding it. If a man cannot choose between two loyalties or allegiances, he is, so far as state organization is concerned, rendered impotent and is at the mercy of those who can and do make the choice, and who support their choice with their physical force. If different men in a social organization choose different allegiances for such physical support, then the result, they say, is, of necessity, either conflict between the two until it is established which is in reality the stronger and able to subdue and hold subject the other, or else, if neither is able to prove itself decisively the stronger, the setting up of two political organizations, and two unified states instead of one.

Thirdly, they declare that this sovereignty that they are describing is absolute, all powerful, unlimited, final, supreme. It is absolute, supreme, all powerful, largely because of its especial nature; that is because the weapon of which it makes use is just that weapon against which, temporally and finitely speaking, nothing can prevail, and it is essentially with temporal and finite concerns that political society is occupied. The spiritual weapons of the church, for instance, stand out in marked contrast to that wielded by the state, since after the spiritual penalties have all been inflicted, and the church can go no further, the individual still, to all intents and purposes occupies the same

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place in political society that he occupied before. And likewise with regard to economic penalties imposed by an economic group or by the state; they may be such that if rigorously applied, they would cut off the springs of human life; but, inasmuch as they are more indirect, they are more uncertain in their working, and moreover, for their final application they must often call upon the arm of the physical power. The coercive power of the state, on the contrary, can and does in the last resort remove all opposition by removing those who oppose its will. As an absolute, supreme, all powerful organization, the power of the state, also, is unlimited according to this doctrine. For only that which is not limited by something stronger than itself, can be absolute in this sense.

Fourthly, the American exponents, at least, of the orthodox theory also make a distinction between what they regard as the original fundamental political organization or state, and the machinery through which it expresses its sovereign will, to which machinery the name government is given. That which they term the state acts of its own initiative and energy and power; that which they term government is only the agent of the state, and is clearly dependent on state power and ultimately on state will. This distinction has been perhaps most clearly set forth by Professor Burgess of Columbia University, and may be cited as one of the chief contributions of America to political thought. The political organization in this country has made it easier than in European countries to perceive the distinction; and the failure of European writers to recognize it may be partly responsible for the conflicting views.

Fifthly and finally, the orthodox theory holds that, human nature being what it is, true and assured liberty does and can exist for the individual or the group of individuals only as created and guaranteed by the state in the form of legal rights; that the so-called natural rights to life, liberty, equality, happiness, property and so forth, amount to little or nothing except as the state guarantees them and stands behind them, inasmuch as, even if they were the gift of nature, about which there is much and grave doubt, they could always be taken away by some one

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better endowed by nature unless the state should interpose its superior power in their defense.

The political monists do not, on the other hand, maintain that this sovereign power is necessarily actively exerted over all its subjects in relation to all details of life, at all times. They maintain only that it can and does fix the scope of its interference and that it can exert itself where and when it will, and that if it refrains, it does so because it deems it expedient so to do. Nor do they maintain or admit that fear is the only motive power that binds the group together and insures obedience. In the vast majority of cases the sense of solidarity, and the fundamental loyalties that operate to insure support for the sovereign power, are necessarily and naturally active also in insuring obedience to that sovereign power, and the maintenance of law and order in the group. It is only against the recalcitrant that the force of the state must either potentially or actively be exerted, and that is in, at most, a small minority of cases. In fact, it is, they hold, only because of the comparatively few recalcitrant and disagreeing ones that political organization is deemed necessary. If all human nature, or even all of that in one group were entirely and at all times united in one superior loyalty, that would in itself be sufficient to hold the group together and no other means would appear as necessary or desirable. That not being the case, the controlling factor in the group has, as a practically universal thing, resorted to the all-compelling force of physical power as sanction for its will, and hence the universality of political organization among men. Finally, political monism does not necessarily, as such, maintain that the all powerful sovereign is freed from the obligations of the moral law. This point of view is characteristic only of some exponents of the doctrine. All that monism, as such, asserts in this connection, is that unless the sovereign power itself wills to obey the moral law, there is no earthly power that can force it to do so. It might be added here that there is nothing inherent in pluralism to assure obedience to the moral law.

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Such is the doctrine of the unified monistic state, for which is claimed, as we have seen, direct and absolute power over each individual subject as well as over all groups of subjects. The attention of the political monist has been directed chiefly upon this power, and he has been very largely concerned with the attempt to reduce all forms of group life to a strict legal definition in order to bring them within the canons and the control of law. In so doing he has, in some part at least, lost sight of the fact that during these recent times human society has been becoming infinitely more complex, that organization has for a variety of reasons been going on among men with amazing rapidity, and that some of their most vital interests have centered in these organizations within the larger society. "Men turn," says one adherent of the pluralist doctrine, "to fellowship as the compass needle turns to the pole, and they form themselves into groups and societies and communities of various kinds, religious, cultural, social, economic. They have churches, the bank clearing house, the medical association, the trade union, and wheresoever there is an interest strong enough to form a nucleus you will find men gathering around it in an association."[4] The attention of the pluralist, however, has been arrested by these groups and by their increasing influence not only over their members, but in the body politic, and in his attempt to interpret this group activity and influence, he has set up the doctrine of the pluralistic state.

The pluralist begins his attack on the monistic doctrine by denying what the monist states as the underlying facts of political organization, and especially the essential unity and absoluteness of the state and its sovereignty. He does not see in the state a social grouping unique in kind and paramount to all others, but declares that the political group is only one among others (of which there is such bewildering variety at the moment) of essentially like or similar nature, over which moreover, he claims, the state is not, and cannot be, supreme—the political loyalty, he declares, being only one among many loyalties by

[4] *The Nation*, July 5, 1919, p. 21.

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which every individual is bound, and not of a peculiar and superior validity.

Dr. Figgis cites as an instance of the inability of the state to control other social groupings within it, the fact that "in regard to the immigration law in South Africa, it was admitted that the imperial Parliament dare not override the will of the local bodies even though they were doing a manifest injustice to their fellow subjects."[5] Mr. Laski mentions as illustrative of the same impotence of the so-called sovereign state the inability of Parliament to coerce Ulster in 1914, the ability of the women suffragists to defy the law in England for a long period before the war, and the powerlessness of the state, as he says, to force the subjection of conscientious objectors to the Military Service Act of 1916. He draws therefrom the conclusion, to cite his own words, "that government dare not range over the whole area of human life;"[6] in which statement also he means to include his denial not only of the supremacy, but also of the unity of the state. And Gierke maintains that the developing theory of the absolute unitary state in the middle ages as postulated of the empire stood in sharp contradiction to the actual facts of the situation.[7]

The adherents of the pluralistic state, however, go much further than this. Comparatively little of their polemic is concerned with the denial that the state can or does control everything within its jurisdiction. By far the greater part of it is taken up with a discussion not of fact, but of right, and the transition from the one point of view to the other is by such subtle and imperceptible steps, where indeed the two are not bound up inextricably with each other, that it becomes very difficult to know in the specific case whether one is within the realm of fact or of theory. Laski continues the paragraph from which I have already quoted, in which he denies that government dare "range over the whole area of human life" [and note the word "dare" used here] as follows: "No government, for instance, dare prescribe the life of the Roman Catholic Church. Bismarck made the

[5] *Churches in the Modern State*, pp. 84–85.
[6] *Authority in the Modern State*, p. 45.
[7] *Political Theories of the Middle Age*, p. 95.

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attempt and it is doubtful if it will be repeated. Where alone the state can attempt interference with groups other than itself, is where the action of the group touches territory over which the state claims jurisdiction. There is no certainty that the state will be successful. There is even no certainty that it merits success." [Note, again here, the shift from the "is" to the "ought."] "It may indeed crush an opponent by brute force." [Note here the acknowledgment of a possible fact.] "That does not, however, establish right, it is merely the emphasis of physical superiority. The only ground for state success is where the purpose of the state is morally superior to that of its opponent. The only ground upon which the individual can give or be asked his support for the state is from the conviction that what it is aiming at is, in each particular action, good . . . . It deserves his allegiance—it should receive it, only where it commands his conscience."[8] This is only one of many similar instances, in all of which Mr. Laski's main insistence is that the state ought not to interfere with other allegiances which may bind its members into other social groupings.

In Gierke's work also we have a curious and difficult intermingling of the "is" and the "ought to be." Gierke's main object is to show the mediaeval theories of the state and of other social groups, whereby under the influence of Roman law all forms of group life tended to be put into the category of the *persona ficta* of the corporation and to be considered solely as created by and existing at the will of the political power as expressed in law. Throughout the whole, however, there runs Gierke's constant protest against what he believes the essential wrongness of this point of view and his constant assertion that these social groupings are real rather than fictitious personalities, that they exist of themselves, that they come into existence and develop by a natural process, and that they are therefore possessed of "natural rights" which, since they are quite independent of the state, the state is in duty bound to respect, and which therefore constitute a real limitation upon the sovereignty of the state.

[8] *Authority in the Modern State*, pp. 45-46.

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In spite of this, there is also evident throughout the whole the tacit acknowledgment that, as a matter of fact, the state was actually controlling the forms of group life within itself, though wrongly, again, as he believes.

Such then are the main contentions of the pluralists both with regard to the "is" and the "ought to be" of political science. Other points in their doctrine will appear as we examine the main lines along which the orthodox school attempts to answer or to criticize the pluralistic doctrine. In the first place, the orthodox theorist would unmistakably assert that he does as a matter of fact discover in political society a supreme and unitary control, and in making this assertion he would find great comfort and support in the knowledge that Dr. Figgis himself goes in one place so far as to say: "It [the orthodox theory] is true to the facts only in a cosy, small and compact state [but 'true,' it is to be noted, nevertheless]—although by a certain amount of strained language and the use of the maxim 'whatever the sovereign permits, he commands,' it can be made not logically untenable for any conditions of stable civilization."[9] This is an acknowledgment on Dr. Figgis's part of all that the monist would ask him to admit.

In the second place he would point out that the issue must always be kept clear and distinct between the study of things as they are, and that of things as they ought to be. He would assert that the first concern of political science is to discover and to establish the positive laws of political phenomena as it finds them actually to be, and that only after it has accomplished that is it ready to pass judgment upon the rightness or the wrongness, morally speaking, of the facts it has discovered, or to enter upon the matter of political and governmental reform.

Thirdly, he would call attention to the distinction between state and government, as already noted, and he would point out that he has never denied that there are of necessity limits to governmental power, inasmuch as the government is only the

[9] *Churches in the Modern State*, p. 224.

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agent of the state and as such is and must be subject to, and limited by the state's sovereign will. He would further call attention to the fact, as he sees it, that the instances cited as showing that the state is not all powerful against certain individuals or groups, are really instances of governmental rather than of state impotence, and that in none of these instances was the final power of the community invoked, so that one cannot state with definiteness where the real strength in the given situation lay. He would hold that the apparent inability of the government to deal adequately with the opposition can be amply accounted for without any impairment of the sovereignty of the state, and in any one of a variety of ways:—either, for instance, that in passing the law in question the government was not accurately registering the actual sovereign will of the state, inasmuch as it failed to take into consideration the attitude of those who now defy the law, whose will is in reality an integral and conditioning factor in the sovereign will and must be considered as such; or, as another possibility, that under the given circumstances the government, and even perhaps that which has been the state behind the government, has deemed it inexpedient to push the matter to an actual test. Without such test, however, it would, he declares, be impossible to determine where the power of control really lies; that is, whether, sovereignty still resides in that which has been the controlling factor, or has passed to the opposing group or groups.

Fourthly, orthodox political science will maintain that inasmuch as by reason of its nature the political organization is an all inclusive organization in a given territory, and also, by reason of its nature, again, the most powerful organization, it must in a sense include and be in a position to control all other social groupings. Political monism, as such, does not claim, however, that the state creates these groupings; it is well content to leave to them an origin and a natural existence of their own. Nor does it attempt to reduce them to the position of the corporation, the *persona ficta* of Roman law. All that it does claim is that of necessity the state is, as a matter of fact, stronger than any one of them, and that it therefore can control them, and that, more-

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over, the measure of control which it actually exercises is that measure which it wills to exert or deems it expedient that it should exert. It does however, as already pointed out, deny that these social groups are possessed of any natural rights which in effect limit the power of the state. It believes that if the social groupings are possessed of true rights, they have them because, and only because, the sovereign power of the state guarantees them against any who would attempt to take them away.

Fifthly, the orthodox scientist would again call attention to the point, stressed earlier in this paper, that he in no way necessarily denies that the state ought to obey the moral law. All that he definitely maintains in this connection is that the moral law does not impose any positive, coercive, political or legal limitation on state action, or on sovereignty, but that as the state wills to act, so it acts—either morally, immorally or unmorally, as it chooses, inasmuch as, even though it may will to act contrary to the moral law, there is obviously no higher human authority to coerce it.

Sixthly, and not least importantly, he would voice his concern over what he sees as the very probable practical results of the pluralists' teaching. If, as the pluralist holds, the state is not all powerful, but the political loyalty only one of many loyalties, more or less equally strong, then obviously something approaching chaos may result, if these coördinate loyalties are numerous and potent and conflicting enough. Moreover, even if, he says, we give the pluralist the benefit of the doubt, and see in his argument only a plea that the state ought not to bind anyone or any group against its consent, then, also, something very like anarchy or chaos is apt to ensue. The question as to the right or the righteousness of the state in demanding the unconditional obedience of its subjects, or, from the other point of view, of the right or the righteousness of the subjects in resisting the state, is one of the most difficult of political science; but it seems quite clear that to count the political allegiance as simply one among many allegiances of approximately equal weight, and to establish the general principle that the active consent of the governed is a necessary precedent to all obedience even in the

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individual case, must tend to lay the way open to a very disorganized and casual political organization, and one which must inevitably endanger what are usually regarded as the prime functions of that political organization, namely, the maintenance of law and order, and the guaranty of liberty and of rights.

To the mind of the orthodox scientist, then, the chief difficulty with the validity of the pluralist doctrine is to be found in its confusion of thought as seen in its failure to distinguish, first, between state and government, and secondly, between the study of the facts of political organization, as, whether for good or for ill, they actually are, and the exposition of political organization as it ought to be. The other points of criticism, also, center around these two, for the doctrine of natural rights itself, which the pluralist is resuscitating for his minor social groupings and even for the individual, is the result of a confusion in thought between the concept of things as they are and things as it seems that they morally and ethically ought to be. Moreover, the declaration that men or groups of men must never be bound against their consent is in reality the postulation of an ideal state of things, in which there would be either entire righteousness and wisdom and agreement among men, or at least enough to insure the order and stability of the body politic. Figgis himself acknowledges that: "To prevent injustice between them [social groupings] and to secure their rights a strong power above them is needed. It is largely to regulate such groups and to insure that they do not outstep the bounds of justice that the coercive force of the state exists. It does not create them; nor is it in many matters in direct and immediate contact with the individual."[10] This is, it may be noted, all, in effect, that the orthodox point of view necessarily claims for the sovereignty of the state.

After all this criticism, however, orthodox political science is still obliged to acknowledge certain great and valuable contributions which the pluralist doctrine has made and is making to

[10] *Churches in the Modern State*, p. 90.

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political thought, especially in the troubled situation of the present; and to see in it a righteous protest against some unfortunate developments within the orthodox doctrine itself.

In the first place, the pluralist teaching puts a timely emphasis on the fact that states are, after all, despite their legal omnipotence, subject to the moral law. In so doing it offers a very necessary protest against some developments of the doctrine of sovereignty, especially in German philosophy, according to which the state was not only all powerful, but also all righteous, even partaking of the nature of the divine, an end and a morality in itself, and therefore always to be obeyed no matter what it might command, a point of view, it must be noted, not at all a necessary deduction from the orthodox doctrine.

Moreover, the pluralist doctrine in urging what it describes as the natural rights of all social groupings, with which the state cannot rightly interfere, very properly utters a warning against overinterference on the part of the state with the concerns of the individuals and groups within it. It is significant, however, in this connection, to note that those who urge the pluralist doctrine most warmly would, at least in many cases, provide through other forms of social grouping, for a large amount of supervision over the specific activities of the group on the part of the organization controlling it. And if it be objected that this control is not a coercive control, the question arises as to how it is to be assured, and also as to what is to happen when the will of the other group or groups conflicts with that of the state. For it is only in the case of conflict that, according to the orthodox theory, the active force of the state is, or needs to be invoked. So long as men are of one mind and one will the political organization as such may remain in abeyance. Many of us are never aware of the restraining force of the law; it is only when one's will or the will of others finds itself in opposition to the state will that the political machinery as distinguished from the machinery of other social groupings is put into motion. And just as soon as the minds and the wills of men have become so unanimous that no conflict appears, the political organization as we have known it can either disappear or change its essential character. Then

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we shall have, and shall need to have no state. One cannot escape the feeling that what the pluralist has really in mind is a society unlike that in which we live today, and that, to use Professor Maitland's words in a connotation other than that in which he used them, he is trying to force his concept of things as they ought to be upon the "reluctant material" of human nature and human conditions as they actually are.

It may perhaps also be remarked that in the pluralist doctrine may be seen in one sense a protest against the too static terms in which the classical theory of sovereignty, especially as stated by Austin, was put, terms which cannot be strictly accurate in a world of constant change and flux for which they do not sufficiently allow. However, in its protest, it goes much too far in the opposite direction, and the description of society that it offers is one that would itself be accurate only in a very advanced state of disorganization, in which a number of loyalties were actually and actively competing for mastery, as compete they would, —a fact which the pluralist seems to overlook.

Finally, the pluralist doctrine is timely in that it calls attention to the present bewildering development of groups within the body politic, and to the fact that these groups are persistently demanding greater recognition in the governmental system. How this recognition is to come, whether through group rather than geographical representation in legislative assemblies, or by some other means, is a problem in itself, for the proper and best way to deal with these groups is perhaps the greatest question before political science today. It may be, as most of the pluralists believe, that a federal organization of government is the solution. To such a solution, the monist could theoretically give his very hearty support, whatever his views as to its practicability might be; but in thus approving it, he would call attention to the all important fact, so consistently overlooked by the pluralist, that the truly federal state is a unitary state, of which the essence consists in the fact that in and through and above its multiple governmental organization there is one supreme loyalty and political sovereignty.

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LOCAL GOVERNMENT IN BELGIUM[1]

LÉON DUPRIEZ[2]

In Belgium there are two units of local government, the province and the commune.

Belgium is divided into nine provinces, the boundaries of which were drawn somewhat arbitrarily by the government of the French Revolution after the conquest of the country in 1795. All the provinces except one are about equal in territorial extent, but they differ considerably in respect to population, which varies from 250,000 to 1,200,000. Thus the province of Luxemburg, whose area exceeds that of any of the others by about a third, has the smallest population; it has neither industrial centers nor any important city (its largest city has a bare 10,000 inhabitants), and it is in large part covered with forests. The differences in population have increased during the last fifty years, as much from the great development of industry in certain provinces as from the growth of certain great urban centers like those of Brussels and Antwerp.

There are 2630 communes in Belgium; their boundaries were not established systematically by a single act, nor by a series of acts of the legislative authority. Almost all grew up in the course of centuries, and their boundaries have come into existence only in accordance with very ancient traditions. There are great differences among the communes, not only in respect to their territorial extent (which varies from some hundreds to some tens of thousands of acres), but also in respect to their population. Some little villages have scarcely a hundred inhabitants, whereas Antwerp had more than 300,000 in 1914. Some communes take

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the name of cities, others are called villages; but that does not make the least difference so far as the law is concerned, nor in respect to the administrative régime to which they are subject. Today there is no longer the shadow of a privilege, special right, or peculiar obligation which attaches to the title of city. Many communes have the title of city by force of tradition, because that title was given to them formerly when cities were invested with peculiar privileges; others have assumed that title recently, because their population has increased so much and become so congested that they no longer have the appearance of a village at all.

The organization of local government in Belgium is based on principles very different, one might even say quite opposed, to those that control local government in America.

The first principle is that of the complete and absolute uniformity of institutions and legal regulations. The provincial organization was regulated by the law of April 30, 1836; the communal organization by the law of March 30, 1836. These two laws have undergone numerous modifications since that time, but all the new acts of the legislative authority have respected this principle of uniformity. Thus all the provinces are equally subject to the same system; one probably would not find in the entire body of the Belgian laws a single provision which would apply only to one particular province, or even one that would not apply equally to all the provinces. The case is the same, in principle, with respect to the communes: the same institutions exist, the same legal regulations apply to the largest cities and to the smallest villages; there is no city that enjoys a special charter; there is not even one special system of local government for the cities and another for the rural communes.

One exception to this rule of uniformity can be pointed out, one of but little importance: the communes which have less than 5000 inhabitants are subject to the supervision of an official of the central government, whereas the largest communes are subject only to the supervision of the provincial authorities. But although no article of the constitution forbids, the Belgian

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parliament has never made a law imposing upon one particular commune a special rule for the organization of its local administration. At most one can cite some recent laws which have created a fifth alderman (*échevin*) in certain large cities; the legislators of 1836, who did not foresee the considerable growth of the great cities, limited the number of aldermen to four and this number became obviously insufficient in four or five cities. The Belgian people are so imbued with this idea of uniformity in legislation—which they consider a result of the principle of equality —that no one even thinks of the possibility of particular laws or special charters. Indeed, the prejudice is so strongly rooted that statesmen and administrators up to the present time have encountered an irresistible opposition when they ask that the great cities and the industrial centers be granted a form of local government slightly different from that of 1836, which is especially suited to the rural communes.

In America local authorities are kept within the bounds of their powers and in conformity to the laws, on the one hand by the legislature, which determines in minute detail all their powers, functions and duties, and on the other hand by the courts of justice, which can annul their acts and overcome their resistance; but they are independent of the governor and of the other officers of the state. In Belgium, on the contrary, the legislature is satisfied with laying down in the law only general principles and fundamental regulations; the courts of justice have neither the power of annulment in respect to legislative acts nor the power of injunction, and they are even strictly forbidden to adjudge administrative acts. The entire control of the acts of local authorities is in the hands of a central executive power, following the principle of hierarchy, on which the entire administrative organization of European states is based. Provincial authorities administer provincial affairs, but under the supervision and control of the central government; the communal authorities administer communal affairs under the supervision and control, first of the provincial authorities and secondly of the central government. This means that certain especially important or dangerous acts of the local authority are valid only when they

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have been approved by the superior authority; all other acts for which the law has not specially required such approval are valid without it; but the higher authority may annul, not modify, these latter acts, if they violate a legal regulation, if they go beyond the powers of the authority belonging to them, or if they are injurious to the general interest of the state.

The lines of division between the powers and functions of the central government and the rights and functions of the local authorities are not so clearly drawn that each can act quite separately in its own sphere without finding itself in frequent contact with the other. On the contrary, in Belgium the central government and the local authorities are, of necessity, constantly impinging on each other, in the first place because of the hierarchic control just described, in the second place because the law has also set up local authorities as subordinate agents of the central government, has called on them to coöperate in the execution of the laws and administration of general affairs, and has delegated to them powers and functions in the administrative services of the nation. Belgian provincial and communal authorities have thus a double duty: on the one hand they administer the local affairs of the province and of the commune under the supervision and under a certain legally limited control of the central government; and on the other hand they take part in administration of the general affairs of the nation under the absolute orders and control of the central government. And in practice it is sometimes very difficult to distinguish in which capacity they are acting. Naturally, when a local authority acts as an agent of the central government, the latter has power not only to give or refuse its approval to certain acts determined by the law, or to annul acts that are illegal or contrary to the general interest, but it can give orders to which the local authority owes outright obedience; it can not only annul every such act which displeases it, without even giving a reason for doing so, but it can amend it, modify it, or itself promulgate a decision contrary or altogether different.

However, it can be said that the local authorities in Belgium enjoy a very large degree of autonomy. In this respect Belgium

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cannot at all be compared with France; it is unquestionably the most decentralized country of all on the European continent. The mere explanation of the legal organization of local government might give an incorrect impression. The traditions of local self-government are so strong in Belgium, public opinion there is so jealous of "communal liberties," that the central government, far from giving a broad interpretation to the powers of supervision and control which the law allows it, has not always dared even to make use of its incontestable rights, or has used them only with extreme caution. On the contrary, it has left the local authorities the greatest liberty in the exercise of their functions, has even allowed them to extend these functions to the farthest limits that the text of the laws permits, perhaps in some cases even to pass beyond those limits. Custom and tradition, even more than law, guarantee the authority and the vitality of the local authorities.

PROVINCIAL ORGANIZATION

In the province there are three distinct authorities, the provincial council, the permanent deputation, and the governor. The provincial council is the representative assembly of the inhabitants of the province; the number of councilors varies from 44 to 93 according to the province. They are elected for eight years, formerly by plural, manhood suffrage, each person possessing, according to certain conditions determined by law, one, two or three votes. This system was abolished by the last parliament, and was replaced by manhood suffrage, equal for all. The vote is taken by *scrutin de liste* (block vote); if a number of candidates equal to the number of councilors to be chosen has not obtained an absolute majority on the first ballot, they proceed to a second election, eight days afterwards, for the seats remaining to be filled. This system will also soon be abolished and there will be substituted for it a system of proportional representation.

The permanent deputation is composed, according to law, of six members elected for eight years by the provinical council and necessarily chosen from its own members. It is presided over by

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the governor, who is also a member *ex officio* and possesses all the powers of discussion and decision. This makes it possible to say that in reality it is composed of seven members: the governor and the six elected deputies. The governor is the representative of the central government; he is chosen and may be freely recalled, without reason or pretext, by the Crown. The governors of the provinces are usually chosen from the politicians rather than from the professional administrators; they resign automatically if the central government passes from one party to another.

The provincial council holds only one regular session each year, the duration of which is limited usually to two weeks and cannot in any case exceed four weeks. Occasionally there are special sessions, but these last only a day or two at most. The provincial council, if we except some special and inconsiderable powers, has, in effect, no other task than that of provincial legislation; it has to vote the taxes and the appropriations, the annual budget, and the loans, to decide upon the construction of the provincial establishment, to regulate provincial interests. The law neither defines nor enumerates what the provincial interests are, but, as a matter of fact, they are not very numerous, nor of great importance. The provincial councils have very little to occupy their attention, aside from the building and maintenance of rural roads; the improvement of the breeds of horses and cattle; the building and organization of certain charitable institutions, for example those for the deaf mutes, the blind, the crippled, the tuberculous; the creation and administration of certain special schools, notably professional schools. This explains how the provincial councils can dispatch all the business they have to take care of, in so short a time, and shows how unimportant is the rôle they play in the political life of Belgium.

The permanent deputation, on the contrary, meets at least once a week, often several times a week in the most populous provinces. Its members receive a salary and allowances which permit them to live suitably; for it must be realized that they cannot practice any other profession, but must devote practically all their time to the exercise of their functions. These functions are, in fact, far from being limited to the administration of pro-

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vincial affairs. The law has intrusted to them, first, the very important and absorbing task of supervising and controlling the activity of the communal authorities; they have to give or refuse their approval to numerous acts of the communal authorities and to inspect them with a view to preventing violations of the laws or acts injurious to general interest.

Furthermore, numerous provisions of special statutes confer upon them very diverse powers in the administration of the affairs of state; there is no type of administrative service, even the technical services, which does not have frequent recourse to the collaboration or advice of the permanent deputation. The services which the permanent deputies render to the state are so important that the central government has assumed the complete payment of their salaries; thus these provincial officers, chosen by the provincial council, whom the central government can neither dismiss nor suspend, are paid exclusively by the treasury of the state.

The law gives to the governor, alone, the duty of seeing to the execution of the decisions of the provincial council, as well as to that of the laws and royal ordinances within the province. Nevertheless the permanent deputation may be described as a true administrative council; for the governor is, for practically all his acts, obliged at least to consider their advice, or even to assure himself of their coöperation. There are many acts, considered a part of the executive function, which must be decided by the deputation and which the governor afterwards must put into execution. Thus the permanent deputation alone can dispose of the landed property of the province, and order that a warrant of payment be given; the governor has no choice but to sign the warrant in accordance with the order of the deputation. But all the powers and all the functions belong only to the deputation as a whole; each member by himself, save, of course, the governor, cannot perform the smallest act. Even for the simplest deliberation and study of data there does not exist among the deputies a division of functions analogous to that which exists among ministers in the government, nor even like that which, it will be seen, appears among the aldermen in the communal administration.

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COMMUNAL ORGANIZATION

In the commune there are also three distinct authorities: the communal council, the aldermanic college, and the burgomaster. The communal council is the body which represents all the inhabitants of the commune. It is composed of seven members only, in the little communes which have less than 1000 inhabitants; the number of communal councilors increases with the population, but never exceeds 39 in the largest cities. They are elected for six years—one-half every three years—formerly by plural male suffrage, with a maximum of four votes to an elector, but this system has just been abolished by act of parliament, and will be replaced by universal suffrage, pure and simple. The vote is taken by *scrutin de liste*, with a system of qualified proportional representation. That is to say, all the candidates who have obtained an absolute majority of votes are declared elected. If after this there remain seats to fill, they do not proceed to a second balloting as for the provincial council, but the remaining seats are apportioned among the different lists of candidates proportionately to the number of votes which they have received. Here also proportional representation without restriction will probably soon be applied.

The aldermanic college (*collège des échevins*) is composed of the burgomaster and of two to five aldermen; there are at least two aldermen in the smallest villages, there are not more than five in the largest cities. The burgomaster is appointed by the Crown but he must be chosen from the members of the communal council. So he seems much less the delegate of the central government than the representative of the inhabitants of the commune who have first elected him. In fact very often the government does not in reality have the function of choosing the burgomaster; almost always there is in the communal council a man whose nomination forces itself upon the government by reason of services which he has rendered, of his popularity in the commune, of his prestige and authority among his colleagues of the communal council. When there is no such man already designated for the function of burgomaster, the government always takes great

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care to choose the councilor who will enjoy the confidence of the people and the council. It has even acquired the habit of consulting officially the communal councilors, or requesting them to present to it a candidate, and, except for very special reasons, it hastens to name him.

Aldermen are elected by the communal council from its members. Their mandate, like that of the burgomaster, has the same duration as that of the communal council; namely, for six years. On the subject of these functions of local government the Belgians have ideas and traditions very different from those of the Americans. They do not believe at all in the advantage of frequent changes; thus the burgomaster, who, like the communal council, has to be reëlected, is always renominated unless he has committed grave faults in his administration, or unless the majority of the new council is opposed to his renomination. It is not uncommon to see a commune directed by the same burgomaster for twenty or thirty years.

The communal council does not have sessions regularly fixed by law. It assembles whenever the functions assigned to it require a meeting. Naturally the number of sessions varies considerably according to the importance of the commune; they are frequent in the large cities, while four or five sessions a year are sufficient in the small villages. The communal council can sit only when it is convoked by the aldermanic college; but the latter is obliged to convoke it whenever so requested by at least one-third of the communal councilors.

In the political and administrative life of Belgium the communal council enjoys a part much more active and important than the provincial council. To be sure, their principal duty is the regulation of all which is of communal interest, just as the provincial council must regulate everything of provincial interest, and the law has not taken any greater care to define and enumerate the communal interests than it has provincial interests. But as a matter of fact the communal interests far surpass the provincial interests in number and importance. The communal sphere of interests includes the building, maintenance and administration of streets, public squares, boulevards and public highways, like-

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wise public gardens and parks; everything connected with public health; the maintenance and administration of primary schools; all that has to do with public benefaction, asylums, hospitals, poor relief; the cemeteries; the development and administration of the properties of the commune—forests, lands and buildings; the administration of markets, fairs and slaughter houses; the police and the maintenance of good order; and the furnishing to the inhabitants of certain commodities which involve a monopoly —drinking water, gas, electricity, tramways.

In regard to these utilities the communal councils can either grant the monopoly of operation to private companies or operate them themselves directly as a commune. These developments in administration were established in Belgium a long time before the modern socialistic tendencies began to spread. Thus, nearly everywhere the distribution of water has from the start been developed as a part of public administration; only two or three cities can be cited where it is carried on by private companies. Brussels has for a long time had communal operation of gas, and its example has been imitated by numerous communes whose administrations were not at all socialistic. Even the distribution of electricity has, in a certain number of cities, been established and developed directly by the communal administration. The tramways, on the other hand, are generally granted to private companies; Liége is the only city which up to the present has communal tramways.

The communal council, to begin with, exercises, in matters of communal interest, all the powers which appertain to parliament in matters of general interest. It passes all the regulations relative to the communal business and establishment, decides upon the creation and organization of the communal administrative services, votes the taxes and appropriations, the annual budget, and the loans and public works to be paid for out of the communal treasury. But it also has to discuss and decide upon a multitude of purely administrative matters, which are usually considered as, by their nature, coming within the province of the executive power. It must decide on all alienations, exchanges, or purchases of real estate in the name of the commune, on the

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acceptance of gifts and bequests made to the commune, on the changes in the possession of communal property, on the alienation of credits, obligations and legal actions pertaining to the commune, and on the choice, suspension and dismissal of all the official agents and employees of the commune. The council can, however, delegate the nomination of employees and subordinate agents to the aldermanic college.

If we leave out of account these powers thus reserved by law to the communal council, the executive functions in the commune belong to the college of aldermen. They belong to the college entirely as a body; each of its members, even the burgomaster, has no powers by himself. To be sure, in the large cities, in order to expedite business, the direction and control of different communal services are apportioned among the burgomaster and the different aldermen. But each one individually can only direct the deliberations of officials, control the execution given by the agents to the decisions of the council and of the college, prepare and propose solutions, present reports and plans; all decisions come from the aldermanic college itself. This is the characteristic that most distinguishes the Belgian from the French system. In France all the powers and functions of administrative regulation, in the commune, belong to the mayor alone; he does not have to deliberate with the aldermen every time on all the decisions he makes; he can simply delegate functions to the adjoints who assist him, to whom he can always give orders and from whom he can always withdraw the power delegated.

Nothing has contributed more to safeguarding the autonomy of the Belgian communes against the encroachments of the central government than this collegiate organization of executive power in the commune. One man alone has not always the necessary energy and force to resist the pressure of a superior authority; not only will he resist better when he feels himself encouraged and supported by the counsels and demands of his colleagues, but often a small group composed of very ordinary men—anyone of whom left to his own strength would not have the audacity to resist—maintain an energetic and courageous opposition, because each excites and inspires the others and each feels himself thereby the stronger and more audacious.

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In principle, the burgomaster has no special power. Nevertheless he is, in his own right, president of the communal council and of the college of aldermen, and this gives him considerable means of directing and of guiding their activity. In fact, beyond that, he is the man who possesses the most personal influence in both assemblies, as well as among the people of the commune. In the small and medium-sized communes, it is not uncommon to find a burgomaster who leads as he listens to the communal council, as well as the aldermanic college. The aldermen necessarily assume more authority and importance in the large communes, where the necessities of administration have brought a distribution of functions between them, and where each one of them has thus received the direction and control of an administrative service.

But there is one domain which the Belgian law has taken away entirely from the competence of the aldermanic college, where it has conferred all the powers on the burgomaster; this is the police. In theory, the burgomaster alone is charged with securing the execution within the commune of the general laws and general provincial regulations; however, this task also can be delegated to the college of aldermen, and these exceptions to the general principle are numerous. But in the matter of police there are no exceptions. The burgomaster alone is charged with the execution of all the police laws and regulations. The communal council itself can, of course, make police regulations; but it cannot control the execution given by the burgomaster to its regulations, it cannot even express its opinion on the measures taken by the burgomaster to assure their execution. In the matter of police, then, the burgomaster has full powers; he acts alone without having to consult his aldermen; he is subject only to the control of the superior authority, provincial or central. Not only does he direct and command all the officers and agents of the communal police, but he can in case of necessity requisition the assistance of the *gendarmerie* (state police) and of the army. He can even make police regulations by himself, in case of necessity, in place of the communal council.

In spite of the uniformity of legislation it is evident that the practical organization of the communal administrative services

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is very different in the large cities from that in the villages. The law, which always limits itself to laying down very general rules, which gives authorization and confers powers on the communal authorities more often than it imposes on them orders and obligations, is flexible enough to lend itself to all local needs.

Such services as the furnishing of water and light, very highly developed in the large cities, do not even exist in the majority of small communes. Such others as police or health which in the large cities require hundreds of officers and agents have, at most, one special agent in the villages. The law authorizes the communal councils to vote salaries and expense allowances to the burgomaster and to the aldermen; but in hardly any of the small or medium-sized communes do the burgomaster and aldermen receive salaries, because their functions absorb so little attention that they can continue to devote to their private profession all the time necessary, and because they consider themselves paid sufficiently by the honor and prestige which their public positions give them. But in the large cities the burgomaster and the aldermen must devote all or nearly all their active time to their administrative departments, and in consequence they are paid. In Brussels the aldermen receive a salary of 8000 francs, the burgomaster has a salary of 20,000 francs. The reason for this great difference is, in the first place, that it is considered the aldermen can still find time to carry on a lucrative profession in spite of the work which they have to put in each day in communal administration, while the burgomaster must devote all his time and energy to his public duties; in the second place, there is a considerable expense of entertainment which falls upon the burgomaster of the capital of the kingdom.

WOMAN SUFFRAGE

Up to the present time women have been neither voters nor eligible to membership in the provincial and communal councils. Nevertheless, thirty years ago the government decided that no point of law was opposed to naming women as members of the committees charged with the administration of hospitals and

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asylums, and the distribution of relief to the indigent,—called "commissions of asylums" or "bureaus of charity," elected by the communal council and controlled by it. The choosing of women for these functions has, however, been very uncommon up to the present.

The principle that only men vote underwent a first exception in Belgium by the law of May 15, 1910, which accorded to women the same rights of suffrage as to men for the elections to the councils of *prud'hommes*. The councils of *prud'hommes* are special tribunals, charged with deciding contests between employers and workmen or mechanics. Each one of these tribunals is composed of an equal number of employers and employees, all elected, one-half by the employers and one-half by the employees of the same industry or group of industries. It is presided over by a magistrate named for life by the government as justice of the peace, for whom this presidency is only a very secondary part of his functions.

The question of revision of the suffrage has been prominent during the present reconstruction period in Belgium. Plural voting has been definitely abandoned and no more elections, central or local, will be carried on according to that system.

In April, 1919, the chambers adopted a law, which, passing outside the formal provisions of the constitution, decided that the next parliament, called to revise the constitution, should be elected by the universal suffrage of men twenty years of age and over, and that in addition the widows and mothers of the soldiers killed in the war, as well as some other women, were to be electors. The number of women enjoying the right to vote under these provisions is small; but the old dogma of the vote as the exclusive privilege of men is in this way weakened.

In the new parliament elected last November under these provisions, the chamber of representatives, on March 10, passed a bill (115 to 22, 5 absent) establishing woman suffrage in municipal elections on the same lines as manhood suffrage. On April 14 the bill passed the senate (60 to 33, 2 absent). Since an amendment to the constitution is not necessary for this change, woman suffrage is, by this bill, extended to all the communes.

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The question of the extension of the parliamentary suffrage to women has caused more difficulty. The Liberal party opposed the municipal suffrage bill, and is in strong opposition to parliamentary suffrage. The Socialists are inclined to await the experience with the votes of women in communal elections before introducing woman suffrage in all elections. The present coalition cabinet has recently proposed parliamentary suffrage as a bill requiring a two-thirds majority, rather than a constitutional amendment. An interesting feature of this struggle over woman suffrage is that in such war-stricken countries as Belgium the women undoubtedly outnumber the men and might form immediately the majority of votes in elections.

In the election last November, the abolition of plural voting, combined, probably, with other causes, increased the Socialist representation in both chambers, and deprived the Catholic party of its long established majority in both chambers. The Liberal party now forms barely a one-third minority in the senate and less than that in the house of representatives. Further changes or extensions of the suffrage are, therefore, looked upon with intense interest by the three parties, to forecast their probable effect on party strength.

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SPECIAL MUNICIPAL LEGISLATION IN IOWA

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The Iowa constitution of 1857 was one of the first to prohibit the passage of special laws for cities and towns. Section 30 of Article III of the constitution enumerates six subjects upon which the legislature is forbidden to pass any special act; the fourth of which proscribes the passage of any act "For the incorporation of cities and towns." The same section also declares that "In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state." In addition to these provisions Section 6 of Article I of the Bill of Rights requires that "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens."

Just what prompted the convention which drafted the constitution of 1857 to declare against special legislation for cities and towns is not clear. The proceedings of the convention do not disclose any debate upon the provision when adopted. The experience of other states may have impressed the constitution makers of Iowa with the evils arising from the unlimited exercise of powers over municipalities by legislative bodies, but that these evils had manifested themselves seriously in Iowa as early as 1857 is almost beyond belief. In 1856 the total population of Iowa was only 517,875[1] and this was largely rural. The federal census of 1860 shows but two cities in the state with a population above 10,000 and these were both under 15,000. The largest communities in practically all of the counties did not exceed 1200,

[1] See Hull's *Historical and Comparative Census*, 1836–1880 (Iowa), p. xliv.

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and even as late as 1870 out of a total population of 1,194,020 only 281,472 were listed as urban.

The prohibition of special legislation for municipalities had been incorporated in the constitutions of Ohio and Indiana in 1851, and it is not unlikely that the Iowa provision was copied from one of these.[2] The opposition to the creation of private corporations by special acts of the legislature manifested itself earlier than that toward the creation of municipal corporations in that way. The Iowa constitution of 1846 declared that "Corporations shall not be created in this State by special laws, except for political or municipal purposes."[3] It is therefore probable that when the constitution of 1857 was adopted the prohibition of special legislation was applied both to private and municipal corporations, because no good reason could be shown why the latter should not be included as well as the former.

Since 1857 the incorporation of cities and towns has been under general law, based upon a statutory classification. Those cities and towns operating under special charters at the time of the adoption of the present constitution were not affected by the adoption of the general statute, but they were permitted to give up their special charters and organize under the general law if they so desired.[4] In like manner they have been permitted to give up their special charters and organize under the commission plan or the city-manager plan, as well as those operating under the general law.

From the organization of the Territory of Iowa in 1838 until the constitutional provision forbidding special charters went into effect in September, 1857, forty cities and towns had been granted special charters. Sixteen of these were granted at the legislative session of 1856–57, at the request of towns desiring special charters before it was too late.

Many of these special charters were liberal in their provisions, and the cities and towns possessing them enjoyed a considerable degree of home rule. The usual method of securing a charter was

[2] Cf. McBain's *The Law and the Practice of Municipal Home Rule*, pp. 68 and 74.
[3] *Constitution of Iowa*, 1846, Art. IX, sec. 2.
[4] *Code of Iowa*, 1897, sec. 631.

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for the inhabitants of the community to petition the legislature in writing. Sometimes a delegation from the locality was sent to the capital for the purpose of presenting a charter, previously drawn by a committee of citizens.[5]

Most of the special charters contained a referendum clause, providing for a special election for the acceptance or rejection of the charter by the electors. In a few instances charters were not accepted by the voters. In one city (Muscatine) the city council was given power to accept or reject an amendment to its charter passed by the legislature.[6] In a few cases the electors were allowed to vote on the repeal of their own charters, a majority being necessary to a decision, but in practically all cases the legislature reserved the right to alter, amend or repeal the charters granted.

The city of Davenport received its second charter in 1842, and the act granting it expressly stated that it was to become effective only if ratified by a majority of the electors, otherwise it was to be null and void. The assembly, however, reserved the right to alter, amend or repeal. In 1847 the assembly passed an act for the repeal of this charter "*Provided*, A majority of the votes polled at the election hereinafter authorized shall be in favor of such repeal." It seems evident that the charter was not repealed, for the next year (1848) an act was passed amending the charter of 1842. In the session of 1850–51 the legislature took matters into its own hands, enacted the present charter of the city of Davenport and repealed "all acts or parts of acts coming within the provisions or purview of this act, or contrary to, or inconsistent with its provisions."

The charters granted were looked upon as matters chiefly of local concern and were usually passed without much discussion or debate, nor do the records show that a charter bill ever failed to pass the legislature, though the governor vetoed three of them on account of irregularities in passage.[7] It is in this spirit that

[5] Robeson, *Special Municipal Charters in Iowa, 1836–1858*, in *Iowa Journal of History and Politics*, Vol. 18, p. 174.

[6] *Laws of Iowa* (Extra Session), 1856, p. 51.

[7] Robeson, *Special Municipal Charters in Iowa, 1836–1858*, *op. cit.*, p. 175.

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much of the municipal legislation is still passed. Dillon says: "Members of the legislature . . . . have come to regard each member as representing and speaking for his own constituency, and have countenanced a tacit understanding that legislation affecting that locality should be his especial and individual care. Having no feeling of responsibility to those whose suffrages do not elect them, they are indifferent to legislation not affecting their immediate constituencies. This indifference results in a process of log rolling founded upon a tacit agreement that where political interests do not intervene, local legislation requested by the representative of the locality shall become law without objection."[8]

Thus the legalizing acts which make up a large part of the legislation of any session of the general assembly are usually recommended for passage as a matter of course and passed without discussion or opposition. In reviewing the acts of the last three sessions of the general assembly of Iowa the writer discovered that wherever an act appeared as special legislation, though clothed in general terms, it always affected a community located in the county which the author of the act represented. It is therefore the purpose of the writer to show that in spite of the constitutional prohibitions cited above, special legislation for municipalities in Iowa is still profuse, and that as long as it has the appearance of being general, it has been the policy of the courts to sustain it.

Following the adoption of the constitution of 1857 the legislature passed a general municipal statute, arranging municipal corporations into three distinct classes according to population as follows: All incorporated communities having a population of under two thousand inhabitants were classed as towns; all of those having a population of two thousand and less than fifteen thousand were designated as cities of the second class; and all having a population of fifteen thousand or over were rated as cities of the first class. This classification was made in the general municipal act passed in 1858 when the population was largely

[8] Dillon's *Municipal Corporations* (fifth edition), Vol. 1, pp. 245-246.

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rural, and it has not been disturbed to the present time. Under this act communities of the two lower classes automatically pass to the next higher class as the increase in population brings them within the next higher class.

A few cities, however, have grown more rapidly than others; the capital city soon became twice as large as the next largest city in the state, and from two to five times as large as most of the cities rated as cities of the first class. Problems therefore arose in these larger cities which seemed to demand special treatment.

On March 20, 1858, the general assembly passed an amendment to the charter of the city of Davenport.[9] The validity of this act came before the supreme court of Iowa at the June term of the same year in the case of Ex parte Samuel Pritz, Judge Dillon appearing as a member of the firm of the counsel for the petitioner.[10] In this case, the court after raising the question of the purpose of Section 30 of Article III of the Constitution said: "The ready and obvious answer is, to prevent special or local legislation; to require that the legislature should pass general laws upon all the subjects named and in all other cases, where such general law could be made applicable. There can be no question but that it [the constitutional provision] was designed to confine the legislature to general legislation. . . . . If . . . . the legislature may not pass a law to *incorporate* a city, but may to amend an act of incorporation in existence before the adoption of the constitution . . . . [it] would make this provision of the constitution practically amount to nothing. For if they may amend, they may to the extent of passing an entire new law, except as to one section. Or they may at one session amend half of the law, and at the next the other half, and thus the plain and positive prohibition of the fundamental law would be evaded." The act amending the charter of the city of Davenport was therefore declared null and void. In like manner the court held that the legislature had no power of re-

[9] *Laws of Iowa*, 1858, ch. 88, p. 152.
[10] Ex parte Samuel Pritz, 9 Iowa 30.

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pealing a special charter or any of its provisions, as the constitutional prohibition would be violated as much by the repeal of a special charter as by its amendment.[11]

Since these decisions of the Iowa supreme court the general assembly has not, to the writer's knowledge, passed any act for the benefit of any city or town in which the city or town was specifically named, except legalizing acts, which has stood the test of the supreme court. Nor has the supreme court failed to appreciate the fact that many legislative acts can, in the very nature of the case, apply to but one community. "An act applicable to cities of a specified population," declared the court, "is not invalid as special legislation, although the limit of population is such that it is applicable to but one city, if in terms it may be applicable to other cities should they attain the specified population."[12] In fact the decision in the Pritz case and in that of the town of McGregor v. Baylies seems to have put an end to legislation for cities by name. Special legislation for cities is, however, common; and though always clothed in general terms, the reader can usually identify the cities benefited almost as easily as if they had been mentioned by name.

There have been several means employed of enacting legislation for the benefit of certain cities: first there is the method of enacting legislation by making it applicable to "all cities" of a certain named population or over. Thus whenever a law declares that any city having a population of seventy-five thousand or over may enjoy certain rights, the city of Des Moines is the only one benefited by the act.

Many other means of classification are employed. Thus in 1917 an act was passed providing that cities located upon any navigable river, forming a part of the boundary of the state, are authorized, where a tax has previously been voted and paid to aid any company in the construction of a highway or combination bridge across such river, to purchase such bridge and its approaches and they may issue bonds for payment, and the

[11] Davis v. Woolnough, 9 Iowa 104.
[12] Tuttle v. Polk, 92 Iowa 433.

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council may fix the toll rates.[13] This act was clearly for the benefit of Muscatine.

In 1915 the legislature passed an optional city manager act which made provision that in cities of twenty-five thousand or over, five councilmen should be chosen, while in cities of less than twenty-five thousand but three should be elected. A special provision for a special city was, however, included as follows: "provided, however, that in any city having a population of twenty-five thousand or more, and less than seventy-five thousand, of which the territory embraced within the boundaries of such city lies in two townships, which are divided by a water course, four councilmen shall be elected, two of whom shall be residents of, and elected from that part of the city lying within each of such townships."[14] This was strictly a concession to local jealousy in the city of Waterloo. Even Carnegie found that a public library could not be built in Waterloo unless one was built on each side of the river; accordingly, Waterloo has two public libraries. Every public enterprise promoted on the one side of the river must be equally promoted on the other side.

The existence of a number of commission governed cities in Iowa offers another convenient basis for special legislation by classification. Thus, in 1917, an act provided that commission governed cities of 90,000 or over could not levy to exceed three mills for the maintenance of the fire department.[15] Des Moines is the only commission governed city in the state of Iowa having a population of 90,000 or over. Another act of the same year grants additional power to cities under the commission form of government having a population of 50,000. Only two cities can possibly come within this classification.

Four acts were passed in 1919 for the special benefit of Des Moines. Two of these apply to cities of 85,000 population and two to cities of 100,000, but in each case Des Moines is the only city that can possibly be benefited. One act declares that "all cities including cities under special charter and commis-

[13] *Laws of Iowa*, 1917, ch. 140.
[14] *Supplemental Supplement to the Code of Iowa, 1915*, ch. 14-d, p. 86.
[15] *Laws of Iowa*, 1917, ch. 131.

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sion plan of government, having a population of eighty-five thousand or over, shall have power" etc.[16] The inclusion of all cities and special charter cities is mere camouflage as the largest city not under special charter or the commission plan has a population of only 30,097; while the largest special charter city has a population of 48,483. The second act applies to "all cities now or hereafter having a population of eighty-five (85,000) thousand inhabitants or over, including cities acting under the commission plan of government."[17] The wording of the other acts is identical with those just given except that the population limit is placed at one hundred thousand.[18]

In addition to the classifications made on the basis of population, other classifications are made, which, because of the conditions specified, apply to but one city and no other. Thus in 1915 the general assembly of Iowa passed an act: "That where any city has, prior to July first, eighteen hundred and eighty, received a grant of the title from the United States to a meandered lake within its corporate limits, to be held and used for public uses, recreation and park purposes, and where such city has for more than twenty years devoted the same to the public use, recreation and park purposes, its board of park commissioners is authorized in the discretion of said board to certify to the county auditor and cause to be collected an additional tax of not exceeding one-half mill," etc.[19] This act was introduced by the representative from Pottawatomie county resident in Council Bluffs, and by the terms of the act it can apply to no other city.

Again in 1917 the assembly passed an act that "any school corporation in which there was organized and founded prior to the year 1902 a university with not to exceed forty acres of land upon which a school building or buildings have been erected which could be used for public school purposes, and said university did prior to the year 1914 abandon said school and place its property upon the market and the same is now owned by a church organization, said school corporation may purchase said land and build-

[16] *Ibid.*, 1919, ch. 168, p. 191.
[17] *Ibid.*, 1919, ch. 155, p. 178.
[18] *Ibid.*, 1919, ch. 288, p. 383.
[19] *Supplemental Supplement to the Code of Iowa, 1915*, sec. 850, p. 72.

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ings where the same are located in a city of the first class, provided the owner of said land and buildings and the school corporation can agree as to the terms of sale and purchase price thereof."[20] In this case the act could apply only to Mason City, and the city has since purchased the land and buildings of the defunct Memorial University.

In 1915 the assembly passed an act authorizing cities of two thousand or more inhabitants to make certain improvements on the main traveled ways into and out of such cities. Provision was made for taxing a part of the benefits to abutting property and part of the expense was to be paid by taxation. However, cities were especially forbidden to pay more than fifty per cent of the cost of such improvements by the levy of taxes or from any city funds. This act was amended in 1919 by adding the following: "Cities under the commission plan having a population of more than twenty thousand (20,000), and in which is situated no city cemetery but contains within their confines a cemetery established for more than twenty years and is conducted by a cemetery association or corporation operated not for pecuniary profit, and which cemetery contains more than forty acres and is so situated as to for a distance of more than fifteen hundred (1500) feet bar access to the city, which cemetery has a frontage of more than fifteen hundred (1500) feet upon one of the main traveled streets or highways leading into said city, and upon which street or highway a street car track is laid, and which street or highway is so situated as to make it impracticable to levy special assessments against a large portion of the abutting property so situated, are hereby authorized to avail themselves of the provisions of this chapter for the purpose of" making the improvements contemplated; and provision was made for the levying of a special tax to bear the full cost of such improvements in front of such cemetery.[21]

There are five commission governed cities in Iowa having a population of over twenty thousand inhabitants, but the other conditions specified apply only to Ottumwa.

[20] *Laws of Iowa*, 1917, ch. 400, p. 429.
[21] *Ibid.*, 1919, ch. 101, p. 111.

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Speaking of the test which may be applied to determine whether or not legislation is general or special Dillon says: "If nothing be excluded that should be contained, the law is general. If anything be excluded that should be contained, the law is special and unconstitutional. But if there be only one locality in the State to which the law can apply by reason of certain characteristics of that locality specified in the statute, the law is not the less local and special because nothing is excluded which should be included."[22]

In these three acts it is evident that the circumstances in each case are very unlikely to apply to more than a single city, yet the words "any city" or "any school corporation" are supposed to relieve such legislation of its special character.

Another act of 1915 provides that "any city of this state having not less than thirty thousand or more than thirty-five thousand inhabitants according to the federal census of A. D. 1910" may grant certain rights to interurban railways and compel railroads to perform certain acts.[23] In this case it can never be contended that other cities may some day receive the benefits of the act, because according to the federal census of 1910 Cedar Rapids was the only city in the state having not less than thirty thousand nor more than thirty-five thousand inhabitants, and no other city can ever be so listed in that census.

Cedar Rapids was again the beneficiary of two special acts passed in 1919. The first of these provides that cities acting under the commission plan of city government, "and having a population of over thirty-five thousand (35,000) and under fifty thousand (50,000), according to the last preceding state census, and the corporate limits of which city are divided by a river, shall have power . . . . , to sell or donate to the county in which such city is located such part of any island in such river belonging to such city as may be desirable or necessary for a court house and county seat site."[24] This act like the previous one very carefully excludes any other city from its provisions.

[22] Dillon's *Municipal Corporations* (fifth edition), Vol. 1, p. 253.
[23] *Supplemental Supplement to the Code of Iowa, 1915*, sec. 2033-g, p. 175.
[24] *Laws of Iowa*, 1919, ch. 111, p. 117.

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There are nine commission governed cities in Iowa, but Cedar Rapids is the only one of over 35,000 and less than 50,000 according to the state census of 1915.

The other act relates to the selection of jurors in superior courts, and provides that "In all cities which now have a population of forty thousand (40,000) or more and in which superior courts are now or may hereafter be established, it shall be unnecessary in such superior court to make demand for trial by jury, and causes triable to a jury shall be tried to twelve jurors without the additional expense to any of the parties, required by section two hundred seventy (270) of the code."[25] In this case, again, Cedar Rapids is the only city affected by the act, as it is the only one of the seven cities having superior courts which has a population of forty thousand or over.

Students of municipal law will no doubt be surprised to know that the acts described above have not been contested in the courts. It is possible that the supreme court would hold them invalid, but the decisions so far have been to uphold such acts.

The case of the State of Iowa v. City of Des Moines[26] is of special interest. In 1890 the legislature passed an act providing "that the boundaries of all cities in this state, which had, by the State Census of 1885, a population of thirty thousand or more, are hereby extended two and one half miles in each direction, from the present boundaries of said cities." The act further provided "that all the territory embraced within said extended boundaries, whether the same is contained in cities, incorporated towns or otherwise, shall be and become a part of the city and subject to its jurisdiction and authority." Other provisions, exempting the annexed territory from the debt of the city annexing it, reorganizing the wards, and the like were also included. According to the census of 1885 Des Moines was the only city affected by the act. Within the territory annexed as provided in the act were seven incorporated towns and one city. The provisions of the act were at once carried out by the city of Des Moines, and by April, 1890, the changes contemplated in

[25] *Ibid.*, 1919, ch. 245, p. 294.

[26] 96 Iowa 521; *Laws of Iowa*, 1890, p. 3.

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the act were completed, and the city of Des Moines exercised full municipal power over the annexed territory.

In March, 1894, the state of Iowa, on the relation of A. G. West, filed in the district court of Polk county its information, in the nature of a *quo warranto*, reciting the provisions of the Act of 1890, that it applied only to the city of Des Moines and was therefore unconstitutional and void, because repugnant to the state constitution. It declared the acts of the city, as to the added territory, were without authority of law and asked that they be so adjudged, and that the city be ousted from the exercise of such authority. The lower court dismissed the petition of the plaintiff and he appealed.

The supreme court declared that where an act "was made to apply only to cities of that number of inhabitants at a particular date in the past, when there was but one such city to which it could apply, so as to avoid the possibility, even, of any other city coming within its provisions" that it could not be made of general application. Nor did the court hesitate to say that it was clearly intended as special legislation, and "though the language of the act is general, it is special legislation," and therefore void. But at the same time the court refused to dissolve the city organization, created by the act of annexation, on the ground that there was no "public interest to be subserved by a judgment avoiding the present corporate existence," after a lapse of four years. "Such a judgment," declared the court in conclusion, "would disrupt the present peaceful and satisfactory arrangement of all the people of the city, as to its corporate existence, without a benefit, so far as we know, to any person. The law does not demand such a sacrifice for merely technical reasons. In fact, the constitutional vindication is complete with the declaration that the act is absolutely void."[27]

Those cities of the state which had received special charters prior to the adoption of the constitution of 1857, retained their charter privileges,[28] but the supreme court of Iowa held that the legislature could not amend any of these charters individually,[29]

[27] State of Iowa v. City of Des Moines, 96 Iowa 538.
[28] Warren v. Henly, 31 Iowa 31.
[29] Town of McGregor v. Baylies, 19 Iowa 43.

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nor can the legislature legalize an act of such a city not authorized by the charter, as such an act would be equivalent to an amendment.[30] However, the court declared that an act which operates upon a particular condition and attaches to it certain consequences wherever that condition exists, is not in conflict with the provision of the constitution forbidding special legislation; therefore, an act applying only to cities under special charters was held not unconstitutional though it could apply to but few cities,[31] and though it be considered as amending their charters.[32] The special charter cities were authorized by an act of 1858 to amend their own charters.[33] This section, with the exception of a few verbal changes, is still in the code substantially the same as originally enacted. This section reads: "On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding city election, of any city or town acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city, such governing body shall immediately propose sections amendatory of said charter or act of incorporation, and shall submit the same, as requested, at the first ensuing city or town election. At least ten days before such election the mayor of such city or town shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein. . . . . On the day specified, the proposition to adopt the amendment shall be submitted to the electors thereof for adoption or rejection, in the manner provided by the general election laws."[34]

In spite of the initiative and referendum provision of the section, which seems to grant by right of amendment a consid-

[30] Ind. School District v. Burlington, 60 Iowa 500.

[31] Haskel v. the City of Burlington, 30 Iowa 232.

[32] State v. King, 37 Iowa 462.

[33] *Laws of Iowa*, 1858, ch. 157, sec. 111, p. 390. This Iowa act was referred to in the Illinois Constitutional Convention of 1869–70, in the debate on provisions to prohibit special legislation.

[34] *Code of Iowa*, 1897, sec. 1047, p. 400.

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erable degree of home rule to the special charter cities of Iowa, all but five have abandoned their special charters to accept the provisions of the general municipal corporation act, or the commission plan of city government. Nor has the writer been able to discover any evidence that any of the still existing special charter cities have ever availed themselves of the power granted. Only one case is listed in the *Iowa Digest* as having arisen under this section. The town of Newton was granted a special charter just prior to the adoption of the present constitution of Iowa in 1857. This charter contained a provision that the town might amend its own charter as long as the amendments adopted were not inconsistent with the constitution and laws of the state. A few years later the charter was amended authorizing the town to build sidewalks and tax the costs to the abutting lots. The authority of the town to amend its charter was questioned,[35] but the town based its right to act on the statute of 1858 mentioned above, and not on the provision of the original charter.

It was argued before the supreme court that inasmuch as the court had already denied the legislature the right to amend the charter of any city or town,[36] that the legislature could not have power to confer upon cities or towns the right to amend their own charters. The court, however, refused to accept this argument and held the act of 1858 to be general legislation, and as in no way in conflict with Article III, Section 30 of the constitution forbidding local or special laws for cities or towns.

The right of the special charter cities to amend their own charters, however, has proved to be of but little value; inasmuch as any legislative act applicable to such cities is held to take precedence over the charter provisions. Under such circumstances there is no security against legislative interference, as is shown in the following case.

The city of Clinton was incorporated as a special charter city in January, 1857, with power to grade, pave, locate and vacate streets. On April 5, 1859, the city adopted a new charter which gave the city council "exclusive care, supervision and control of all public highways, bridges, streets, alleys, parks, commons,

[35] Von Phul v. Hammer, 29 Iowa 222.
[36] Ex parte Samuel Pritz, 9 Iowa 30.

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levees, and landings within the city," and the council was authorized to keep them open and in repair and free from all obstructions and nuisances. Acting under this authority the city council passed an ordinance, the same year, prohibiting any "railroad company from constructing its track through or upon any street within the limits of the city, and from occupying the same for right of way or other railroad purposes." The ordinance also provided that "no railroad company shall hereafter be permitted to construct its track across any alley, street or avenue in the limits of the city, at or near the grade of such alley, street or avenue, or otherwise than over or under the same. . . ."

In 1860 the state legislature granted to the Cedar Rapids and Missouri River Railroad Company authority to build a railroad from Lyons, in Clinton county, to a point of intersection with the Chicago, Iowa and Nebraska railroad, within the corporate limits of the city of Clinton. The city sought to restrain the railroad company by injunction.[37]

Judge Dillon, the chief justice of the supreme court of Iowa, held that where the fee of the streets in a city is vested in the corporation in trust for the public, the legislature may authorize them to be used by a railroad company in the construction of its road without the consent of the city and without compensation. Moreover he held that the act of the legislature was not in conflict with the constitution prohibiting local and special laws. Two of the other judges, who concurred with Judge Dillon in his conclusion, based their reasoning on the general right of way act. In either case the city's right to control its own streets was held inferior to the right of the state to legislate concerning the same.

At the present time there are but five special charter cities in the state, namely:

	Population 1915
Davenport	48,483
Dubuque	41,795
Muscatine	15,785[38]
Glenwood	3,291
Wapello	1,532

[37] The City of Clinton v. The Cedar Rapids and Missouri River Railroad Company, 24 Iowa 455.

[38] Was 16,178 in 1910.

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It has become a custom in granting power to cities in Iowa usually to include the special charter cities, especially the larger ones, as it has been held in this state that general municipal legislation does not apply to the special charter cities unless they are specifically mentioned. Municipal legislation such as the following is therefore not uncommon: "Cities having a population of thirty-five hundred or over, and those acting under special charter, shall have the power to erect a city hall and to purchase the ground therefor." Such an act evidently grants to the communities of Glenwood and Wapello rights denied to all other municipalities having a population of under thirty-five hundred. In 1915 this act was amended so as to include "cities and towns, including cities under commission plan and those under special charters,"[39] thus extending the right to all grades of municipal organizations regardless of population.

The twenty-ninth general assembly passed an act relating to the appointment, term, compensation, removal, etc., of waterworks trustees and provided that "All of the provisions of this act shall be held and construed as applying to cities of the first class and to cities acting under special charters."[40] Here, again, the small communities of Wapello and Glenwood by virtue of their special charters enjoy rights not granted to towns or cities of the second class.

In 1915 an act was passed providing "That cities under special charter now or hereafter having a population of twenty-five thousand or over shall have, and are hereby granted the power to place by ordinance, the charge, custody and control in the park commission, of all trees, shrubbery, flowers and grass outside of the lot or property lines and inside of the curb lines and upon the public streets, and authorize the park commission to plant, cut, prune, remove, transplant, spray, care for and maintain all trees, shrubbery, flowers and grass outside of the lot or property lines and inside the curb lines and upon the public streets, in such a manner as not to interfere with public travel,"[41] etc. The

[39] *Supplemental Supplement to Code of Iowa, 1915*, sec. 741-d, p. 62.
[40] *Supplement to the Code of Iowa, 1913*, sec. 747-b, p. 260.
[41] *Supplemental Supplement to the Code of Iowa, 1915*, sec. 997-c, p. 81.

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act as originally passed could only apply to Davenport and Dubuque, the only special charter cities having a population of twenty-five thousand or over.

Here was an act that established a complete change of policy relative to the care and custody of property between the lot line and the curb. Why such an act should have applied only to special charter cities of twenty-five thousand or over is hard to tell. If the powers granted were desirable powers to extend to municipalities, Cedar Rapids, Waterloo, Council Bluffs, Clinton and Sioux City, all cities of over twenty-five thousand should also have enjoyed these powers. No doubt, the act as passed is valid, because the supreme court of Iowa has declared that an act applicable to cities of a specified population is not invalid as special legislation, although the limit of population is such that it is applicable to but one city, if in terms it may be applicable to other cities should they attain the specified population.[42]

This decision together with that cited above in the case of Haskel v. Burlington evidently gives the legislature complete freedom in passing any law for any city by simply creating a class according to its population and providing that any city now or hereafter having the specified population may enjoy the rights or provisions granted.

The assembly of 1917 amended the act referred to above by striking out the words "now or hereafter having a population of twenty-five thousand or over"—thus granting the powers conferred to all special charter cities. Now, according to the act as amended the little communities of Glenwood and Wapello by virtue of their special charters enjoy rights and powers relative to the care and custody of property between the lot lines and the curbing not enjoyed by any city or town operating under the general municipal law of the state. The absurdity as well as the injustice of this condition is at once apparent.

In 1913 the assembly passed a smoke nuisance law providing that: "The emission of dense smoke within the corporate limits of the cities of the state, including cities acting under commission

[42] Tuttle v. Polk, 92 Iowa 433.

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form of government, now or hereafter having a population of thirty thousand or over and in cities acting under special charter now or hereafter having a population of sixteen thousand or over, is hereby declared to be a nuisance," and provision for the abatement of such a nuisance, by ordinance, was provided for.[43] When this act was passed there were eight cities in the state operating under commission government, but only three of them had a population over thirty thousand. Here we have a double classification within the same act; namely, cities including those under commission government having a population of thirty thousand or over and special charter cities having a population of sixteen thousand or over. Why should cities of less than thirty thousand and not possessed of special charters be denied the right to regulate the smoke nuisance while special charter cities above sixteen thousand were given the right? The census figures of the special charter cities give the answer. Dubuque and Davenport could just as well have been included under the classification of cities of thirty thousand or over. It was therefore intended to extend the benefits of the law to Muscatine, which had according to the census of 1910 a population of 16,178. This act is still in force, yet the census returns for 1915 show the population of Muscatine to be 15,785, thus the city can no longer be classed as a special charter city of sixteen thousand or over.

In 1884 the legislature passed an act: "That cities of the first class, that have been or may be so organized since January 1, 1881, shall have power to open, widen, extend, grade. . . . ." pave, and otherwise improve their streets and alleys and assess the cost to the abutting property. The supreme court declared that though the act dealt with cities organized since a stated date it did not render it invalid as special legislation or as lacking uniform operation throughout the state.[44] The court further said: "The original act specifies a date as a means of classifying the cities, of the grade named, that are and are not to be affected by it. The difference in population which, as a fact, if specified in the act, would have served as a legal basis of clas-

[43] *Supplement to the Code of Iowa, 1913*, sec. 713-a, p. 232.
[44] Owen v. Sioux City, 91 Iowa 190.

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sification, really existed, though not specified; and the query is presented, Will the act be declared unconstitutional, when facts are judicially known to exist that would be a legal basis for classification, because a date is used as a basis, and not such facts? That the legislature relied upon the date as a reason for its act, in any other sense than as it served as a means by which the law was made to meet the conditions and circumstances leading to its enactment, no one can believe. Of course the law was not made because of the date. It was made to meet conditions and wants, existing or anticipated, of certain cities, and the date was but the separating point whereby other cities were excluded from the operation of the law. That it makes another classification of cities than those based on population is not fatal to the act, because, as we have said, the classification on the basis of population is by legislative action, and there is nothing prohibiting such further classification as the legislature may think proper."

The writer, however, is inclined to believe that the date was inserted in order to apply to Sioux City. The rapid growth of Sioux City was no doubt the occasion for the act. In 1875 the population of Sioux City was 4290, in 1880 it was 7366, in 1885, 19,060. The act in question was passed in 1884. The fact that the city had more than doubled in population in five years and the fact that Sioux City was the only city which became a city of the first class between 1880 and 1885 leads one to the conclusion that the act was intended to meet a special need.

Speaking of the policy of the courts in sustaining acts similar to those here cited, Hubbard says that the courts have treated as valid a classification according to population "which treats alike all cities which now have or hereafter may have a certain population. The provision which makes such legislation apply to all cities which hereafter may have the prescribed population is supposed to relieve it from any objection. It matters not that the cities may not actually grow to have such a population; the mere possibility of such growth is sufficient."[45]

[45] Hubbard's "Special Legislation for Municipalities," in the *Harvard Law Review*, Vol. 18, p. 593.

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There are hundreds of communities in the state of Iowa today that cannot, as far as one can now see, reach the twenty-five thousand mark within the next century, and even if they should, the cities of twenty-five thousand and over of today would no doubt be so much larger that the legislature in its wisdom would again create a new classification for them that would put them as far above other cities as they are today. Therefore, to justify a classification on the grounds that other cities may some day grow large enough to be included is to speak of a classification that does not exist.

The conclusion one naturally draws from a study of municipal legislation as illustrated above, is that such classifications have no other object than to defeat the constitutional provision. "A classification," says Dillon, "which is not adopted in good faith tends to deprive the people of such slight notice as the recital of the name of the locality will afford them, and leaves them at the mercy of secret or disguised attempts to change municipal laws."[46] He therefore declares that thirty years' experience with these constitutional interdicts against local and special legislation has convinced him that they have failed to produce the beneficial results anticipated. Thus he concludes that the right to pass local and special legislation for municipalities should be restored, under proper safeguards. This is also the conclusion of Hubbard.[47]

In nearly all of the cases cited above, it will be observed that the end sought is the control of some purely local affair, usually involving the right to levy and assess taxes to meet the expenses necessary to accomplish the desired end. In such cases there is little wonder that the members of the legislature have little concern, if the inhabitants of a particular community desire to tax themselves for a particular purpose, or to enjoy a power expressed in permissive language. The cities benefited might just as well be named outright, for to call such legislation general is simply a farce.

[46] Dillon's *Municipal Corporations* (fifth edition), Vol. 1, p. 253.

[47] Hubbard's "Special Legislation for Municipalities" in the *Harvard Law Review*, Vol. 18, p. 602.

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That legislation of the character herein described is in effect special legislation is frankly admitted by the legislators themselves. One of the members of the general assembly reviewing the acts of the Iowa legislature for *American Municipalities* in 1915 says, concerning the municipal legislation enacted: "Many of these affected but one locality, as the Griffin bill to prevent floods in cities, for Sioux City's special benefit; the use of the bridge fund in Cedar Falls, by McFarlane; the special saloon bill by Kimberly and Kane, affecting only Dubuque and Davenport; giving cities power to condemn land for sewer inlets, by Jamieson, for Burlington's benefit, etc."

To permit special legislation in such cases may be advisable, but to grant a reasonable degree of home rule would not only accomplish the same results, but would relieve the general assembly of a large number of bills that regularly take up its time.

Statutory home rule was urged before the general assembly of Iowa a few years ago, but failed to pass.[48] The charge, however, that the farmers defeated the measure is not shown by the record. In the senate, which is composed of fifty members, twenty-five members voted for the measure, ten against it, and fifteen were recorded as absent or not voting. Of those who voted against the measure there were five lawyers, three bankers, one farmer and one publisher. Nor does it seem to have been a party measure, inasmuch as nineteen Republicans and six Democrats voted for the act, six Republicans and four Democrats voted against it, while eleven Republicans and four Democrats were absent or not voting.[49]

[48] The bill proposed to grant cities authority to exercise all powers of local self-government subject to such specific restrictions as to particular powers as now are or may hereafter be established by law. It also provided that no enumeration of powers in any law should operate to restrict this general grant of power, or to exclude other powers comprehended within the grant.

Two amendments were adopted on the floor of the senate: First, no city was to be allowed to incur any debt or levy any taxes unless specifically authorized by law, and second, a construction clause providing that nothing in the law should be construed as repealing any of the police powers of the state, and that all laws enacted by the state should be binding on all municipalities and municipal officers.

After the adoption of these amendments the bill was defeated as noted above.

[49] *Senate Journal* (Iowa), 1915, p. 1501.

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One of the chief arguments made against the measure at the time it was under consideration was that, since it was only a statutory grant of home rule, it would in no way stop legislative interference in municipal affairs. The argument was no doubt valid, for the special charter cities soon discovered that the statutory right to amend their charters was of but little value if the general assembly might legislate for such cities as a class. It has already been shown that whenever legislation applying to the special charter cities is in conflict with the charter provisions, the legislation takes precedence over the charters and therefore works a repeal of the charter as far as it is in conflict with such legislation. The special charter cities have therefore sought special acts at the hands of the legislature as much as those cities not enjoying special charters.

There is, however, a growing belief in Iowa that the municipalities of the state ought to be given greater freedom in the control of those things which concern them alone. The fear of abuse of power can readily be overcome by fixing a maximum limit of taxation; but having determined that, there is no good reason why the legislature should say how much the cities may spend upon each of their numerous functions. Local needs should determine the purposes for which expenditures are made. These are not likely to be the same in any two communities. Moreover, whenever a local need arises, the legislature shows little disposition to deny the power requested to meet it. But confronted with the constitutional prohibition against special legislation it enacts in general terms a measure that can seldom apply to more than one community. The people of any community are certainly better judges of their purely local affairs than the state legislature can possibly be no matter what its wisdom or good intentions.

In his presidential address, before the Iowa State Bar Association in 1915, Hon. F. F. Dawley took issue with the theory of the legal status of municipal corporations as expressed by Dillon—that "municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature." Moreover, he asserted that the responsibility for the general accept-

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ance of this view largely rests with the courts, "which have generally failed to observe the historical fact that communities of people known as towns and villages originated before state governments and independently of them and possessed and exercised rights and powers not derived from the state but inherent in the very nature of our system of government." Citing numerous instances in which the courts have held that cities do enjoy a right of local self-government which cannot be taken from them by legislative act, he declared that "the long line of cases holding that cities and towns have no powers whatever, even in local matters, except such as are expressly conferred by act of the legislature, ought to be overruled without waiting for an act of the legislature to set them aside."

Whenever the fundamental right of local self-government is restored to the cities of Iowa, whether it be by constitutional amendment, court decisions or legislative enactment, then, and not until then, may we expect to see a material decrease in the number of acts, such as have been the subject of this paper, biennially passed for particular communities.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY CHARLES KETTLEBOROUGH
Director, Indiana Legislative Reference Bureau

Statutory Revision and Legislative Aids. During the past year, seven states provided for the revision of their general laws, two partial revisions were authorized and the completed revisions of four states adopted; considerable activity was also displayed in the codification of single acts and the publication of those laws most frequently in demand. Of the legislative aids provided, the most noteworthy are the creation of commissions on uniform state laws, the establishment of drafting bureaus, the regulation of lobbying and the installing of a mechanical system for the registration of the votes of members of the legislature.

Compilation and Revision of General Statutes. Seven states (Colorado, Iowa, Missouri, Wyoming, Arkansas, Montana and Oregon) provided for the revision, consolidation, codification and annotation of all of the laws of the state of a general nature. Colorado created a commission to undertake this work, consisting of two competent attorneys, appointed by the governor in consultation with the judges of the supreme court. One justice of the supreme court and two district judges, to be appointed by the governor, are to act in an advisory capacity. The work of the commission is to be submitted to the legislature of 1921 and together with the session laws of 1921 will constitute the official code.[1] The Iowa code commission consists of three persons, one of whom is the supreme court reporter and two of whom are to be named by the governor from a list of 5 selected by the chief justice of the supreme court. All annotations are to be prepared by the supreme court reporter.[2] Missouri created a joint legislative committee, consisting of seven senators, seven representatives, the president pro tem of the senate and the speaker of the house, to collate, compile, codify and revise the general statutes for publication in not to exceed 3 volumes. The revision was designed to become effective on November 1, 1919, and 20,000 sets were ordered printed.[3]

[1] Colorado *Session Laws*, 1919, p. 160.
[2] Iowa *Session Laws*, 1919, p. 64.
[3] Missouri *Session Laws*, 1919, p. 485.

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In Wyoming, the governor is authorized to appoint 2 commissioners to prepare for publication in one volume all laws of a permanent nature in effect on March 10, 1919, to be known as the compiled statutes. The compilation is to take effect before the legislature of 1921 upon the issuance of a proclamation by the secretary of state announcing its completion and adoption.[4] The governor and supreme court of Arkansas are authorized to appoint a suitable person to revise the laws of a general character in force at the close of the session of 1919. When the revision is complete it is to be submitted to an examiner and if found correct is to be published in one volume of which 12,000 copies are to be printed.[5] In Montana, the supreme court is directed to appoint a suitable person to revise the code of 1907 and the acts since passed. The revision is to be completed by January 1, 1921, and is to be published in 5 volumes.[6] The supreme court of Oregon is authorized to appoint a code commissioner to compile and annotate the general statutes of which 1,000 sets are to be published in two or three volumes.[7] South Dakota appropriated $4,000 to complete the revised code of 1919 and provided for the printing and distribution of 1,250 copies.[8]

Partial Revisions. The legislature of Nevada authorized the supreme court to contract for the compilation and annotation of all statutes embodied in the acts of 1913, 1915, 1917 and 1919.[9] In Nebraska, the attorney-general was authorized to appoint a compiler to codify and publish in a supplemental volume all laws enacted since 1913.[10]

Adoption of Revised Statutes. Connecticut adopted and confirmed the general statutes of the state as revised, arranged and published in 1918 and authorized the comptroller to appoint a selling agent in every city and town of the state having a population of over 50,000, the retail price being fixed at $7.50.[11] Idaho enacted the compiled laws as completed prior to the last session, and authorized the clerk of the supreme court to prepare a general index to be included in each volume and to incorporate with the compiled laws all general statutes, includ-

[4] Wyoming *Session Laws*, 1919, p. 47.
[5] Arkansas *Session Laws*, 1919, p. 221.
[6] Montana *Session Laws*, 1919, p. 408.
[7] Oregon *Session Laws*, 1919, p. 439.
[8] South Dakota *Session Laws*, 1919, pp. 48 and 352.
[9] Nevada *Session Laws*, 1919, p. 400.
[10] Nebraska *Session Laws*, 1919, p. 870.
[11] Connecticut *Session Laws*, 1919, ch. 38 and 137.

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ing those of the 1919 session; the secretary of state is authorized to publish 3,000 sets of three volumes each and sell them at $4.00 per volume.[12] Alabama created a joint legislative committee to inquire into and examine the compilation of general statutes as submitted by Samuel Will John. Florida by an act of June 9, 1919, formally adopted the Revised General Statutes previously prepared by authority of Acts 1915, ch. 6930 and Acts 1917, ch. 7347.[13]

Separate Law Codifications. The following laws were codified by the various legislatures during the last session: Illinois codified the general corporations acts of the state; Delaware, West Virginia and Georgia the school laws; Maine, Illinois and Ohio the fish and game laws; New Jersey the laws concerning counties and relating to charities and corrections; Indiana and New Jersey the general tax laws; Georgia and Ohio the bank laws; and Pennsylvania the bank department and library laws.[14]

Separate Law Codifications Authorized. Oklahoma created a children's code commission of 3 persons to codify and revise the laws relating to children; the attorney-general of Michigan is authorized to codify and consolidate the laws relating to corporations. Nevada created a commission consisting of the governor, state controller, treasurer and auditor to revise and codify the revenue laws of the state and report to the next session of the legislature.[15] South Carolina provided for the appointment of a committee to revise the laws relating to the state insane hospitals;[16] Maine created a legislative committee to revise, collate, arrange and consolidate the inheritance tax laws of the state.[17] Minnesota provided for the appointment of a commission of two senators, two representatives, the dairy and food commissioner, a member of the attorney-general's staff and one ap-

[12] Idaho *Session Laws*, 1919, pp. 4 and 197.

[13] Alabama *Session Laws*, 1919, pp. 32 and 169; Florida *Session Laws*, 1919, p. 109.

[14] Illinois *Session Laws*, 1919, p. 312; Delaware *Session Laws*, 1919, p. 352; West Virginia *Session Laws*, 1919, p. 39; Georgia *Session Laws*, 1919, p. 288; Maine *Session Laws*, 1919, p. 427; Illinois *Session Laws*, 1919, p. 25; Ohio *Session Laws*, 1919, p. 577; New Jersey *Session Laws*, 1918, p. 567; New Jersey *Session Laws*, 1919, p. 343; Indiana *Session Laws*, 1919, p. 198; New Jersey *Session Laws*, 1919, pp. 847 and 883; Georgia *Session Laws*, 1919, p. 135; Ohio *Session Laws*, 1919, p. 80; Pennsylvania *Session Laws*, 1919, pp. 209 and 242.

[15] Oklahoma *Session Laws*, 1919, p. 92; Michigan *Session Laws*, 1919, p. 44; Nevada *Session Laws*, 1919, p. 287.

[16] South Carolina *Session Laws*, 1919, p. 661.

[17] Maine *Session Laws*, 1919, p. 644.

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pointive member to revise, codify and annotate the dairy and food products laws and to report on or before December 1, 1920, and a second commission consisting of the attorney-general, the public examiner, the state printer and one appointive member to codify and revise the laws relating to legal notices and report to the legislature of 1921.[18] Pennsylvania continued the commission created in 1917, consisting of two bankers and two lawyers to codify and revise the laws relating to banks and trust companies;[19] and Oregon created a child welfare revision committee of three members to codify, classify and index all laws pertaining to children.[20]

Legal Publications Authorized. The legislative counsel of California is authorized to prepare for publication 2,000 copies of an index of the constitution and laws of the state. Pennsylvania authorized the publication of 100,000 copies of the fish, game and forestry laws. Michigan provided for the publication of an index of all local and special acts of the state. Connecticut authorized the publication of a pamphlet containing the federal naturalization laws and the state election laws; and the state librarian of Maine is authorized to prepare an index of the special and local laws from 1820 to date.[21]

Commissions on Uniform Legislation. South Dakota and Idaho created commissions on uniform state laws which are authorized to attend the meetings of the National Conference of Commissioners on Uniform State Laws and report to the legislature the results of their work.[22]

Drafting Bureaus. Oregon created a legislative service and reference bureau consisting of 5 members of the faculty of the state university, including the heads of the departments of law, economics, history and commerce. Members of the faculty and students may be employed in doing research work. The duties of the bureau are to investigate public questions and draft bills. Wyoming provided that the senate and house jointly are authorized to employ two attorneys for the term of the legislature to be known as the consultation committee and whose duty it is to prepare bills, resolutions and amendments.[23]

[18] Minnesota *Session Laws*, 1919, pp. 473, 768.

[19] Pennsylvania *Session Laws*, 1919, p. 1057.

[20] Oregon *Session Laws*, 1919, p. 538.

[21] California *Session Laws*, 1919, p. 926; Pennsylvania *Session Laws*, 1919, p. 902; Michigan *Session Laws*, 1919, p. 500; Connecticut *Session Laws*, 1919, ch. 6; Maine *Session Laws*, 1919, p. 577.

[22] South Dakota *Session Laws*, 1919, p. 431; Idaho *Session Laws*, 1919, p. 530.

[23] Oregon *Session Laws*, 1919, p. 232; Wyoming *Session Laws*, 1919, p. 3.

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Lobbying. Maine enacted a law of the usual type providing for the registration of legislative counsel or agents who accept employment to promote or oppose the passage of legislation.[24]

Mechanical Vote Registration. Iowa authorized the executive council to procure and install an electrical and mechanical system for the instantaneous registration of the votes of the members of the general assembly on all questions requiring a roll call. The vendor is required to keep the machine in repair, due to any mechanical defects, free of charge for a period of five years, and no money is to be paid on the contract price until the executive council and 3 members of the house have approved it. The sum of $18,000 was appropriated to defray the cost of purchase and installation.[25]

Miscellaneous. Iowa provided for the printing of 6000 copies of the laws of each session which will be sold at fifty cents to residents and $1.00 to nonresidents.[26] Connecticut provided that all public acts, unless otherwise specified, will hereafter take effect on July 1 following the session.[27] By a concurrent resolution, Idaho provided that in all bills amending existing laws the amendatory matter, in both the engrossed and enrolled copies, shall be underlined and that asterisks shall be inserted to indicate the parts stricken out and that the session laws shall be similarly identified.[28]

C. K.

Statistical Agencies. The collection and dissemination of statistical information of various kinds by state boards or commissions was the subject of legislation in seventeen states in 1919. In twelve of these[1] the chief interest lay in provision for the gathering and compiling of agricultural statistics; in eight states coöperation with the United

[24] Maine *Session Laws*, 1919, p. 91.
[25] Iowa *Session Laws*, 1919, p. 424.
[26] Iowa *Session Laws*, 1919, p. 35.
[27] Connecticut *Session Laws*, 1919, ch. 225.
[28] Idaho *Session Laws*, 1919, p. 594.

[1] Arkansas *Session Laws*, 1919, Act 209, p. 166; Colorado *Session Laws*, 1919, p. 632; Idaho *Session Laws*, 1919, ch. 37, p. 136; Illinois *Session Laws*, 1919, p. 14; Maine *Session Laws*, 1919, ch. 99, p. 91; ch. 151, p. 150; Michigan *Session Laws*, 1919, no. 47, p. 76; Missouri *Session Laws*, 1919, p. 110; Oklahoma *Session Laws*, 1919, ch. 82, p. 131; Oregon *Session Laws*, 1919, ch. 124, p. 180; South Dakota *Session Laws*, 1918, Special Session, ch. 28, p. 31; 1919, ch. 102, p. 83; Tennessee *Session Laws*, 1919, ch. 174, p. 642; West Virginia *Session Laws*, 1919, Special Session, ch. 11, p. 29.

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States department of agriculture and the establishing of a coöperative crop reporting service for the state, formed an important motive back of the legislation. Arkansas and Missouri definitely mention the establishment of a coöperative crop reporting service; while Colorado, Maine, Michigan, Tennessee and West Virginia merely provide for coöperation in general terms. Under the present policy of the United States bureau of crop estimates, this virtually assures the creation of this new coöperative service in each of these states.

In Illinois, Maine, Michigan, Missouri, Oklahoma, Oregon, South Dakota, Tennessee and West Virginia the statistics to be gathered are purely agricultural. In Michigan the new statute merely adds authority for the secretary of state to enter into coöperative arrangements with the United States department of agriculture, by amending a statute of 1881 under which the state requires monthly reports on live stock and growing crops.[2] The other eight states require the local assessors, at the time of making the annual assessment of property, to collect and tabulate such agricultural information as may be required by the state board, on blanks prescribed and furnished by the latter. In Illinois the assessor must return such lists to the county clerk within ten days after the completion of the assessment, the clerk forwarding them to the state department of agriculture. In Maine the local assessors in each city, town and plantation collect the required statistics; in Missouri the county and township assessors. In Oklahoma, Oregon, Idaho, Colorado and Tennessee it is the duty of the county assessor. South Dakota provides that each township, town or city review board, as its first duty upon qualifying as such board, shall examine the statistical returns of the assessor and require the assessor to correct or complete such lists. No assessor can receive remuneration for his services until he has submitted complete and correct lists of the statistics required. Five states provide additional compensation for the local assessors for collecting this information. In Oklahoma and Tennessee this compensation is five cents per farm reported; in Missouri, four cents. West Virginia authorizes the county court to allow reasonable compensation not exceeding ten per cent of the assessor's salary. In Maine the rate is the same as for the assessor's services in the assessment of property. Idaho merely states that the cost of this work is a part of the expense of the assessor's office.

State Administrative Authority. Six states[3] make it the duty of the state board or department of agriculture to collect and compile agri-

[2] Michigan Laws, 1881, act 33, amended by act 47, p. 76, *Laws*, 1919.

[3] Illinois, Maine, Missouri, Oklahoma, Tennessee and West Virginia.

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cultural statistics. Oregon and South Dakota add that function to the duties of the state tax commission.

Arkansas created a bureau of crop estimates and immigration, under the supervision of the commissioner of mines, manufacturing and agriculture, who appoints two assistants, one a graduate of an agricultural college, the other with statistical experience, who have charge of the collection and tabulation of information concerning agricultural, mineral and timber resources of the state.

The commissioner of immigration, under the state board of immigration, is also charged with the collection of agricultural statistics in Colorado. Idaho also intrusts this function to the department of immigration, labor and statistics.

Special Statistics. Only one state, in 1919, has provided for the centralization of all state statistical work in a single office. The Idaho law provides not only that the department of immigration, labor and statistics shall have charge of the collection and publication of statistics other than vital statistics, but it also further specifies that any department of the state government requiring the collection of statistics must make a request therefor to the department of immigration, labor and statistics.

The Nebraska department of agriculture is granted authority to gather, tabulate and publish statistics showing the condition of tenants and renters in rural communities and incorporated villages and cities of the state.[4]

Threshermen must register with the county auditor in South Dakota, and must keep records and submit returns showing the amount of grain and seed of each kind threshed during the season and when and for whom it was threshed. This information is filed with the state director of markets, on blanks furnished by him.[5]

In Colorado, Arkansas and Idaho the statistics collected are not confined to agriculture, the general purpose being the compilation and dissemination of information concerning all the resources of the state that would be of interest or value to possible settlers or immigrants.

Arkansas and Montana also stress the collection of statistics concerning mineral resources. In the Montana School of Mines there was established the Montana state bureau of mines and metallurgy which is charged, among other duties, with the collection and publica-

[4] Nebraska *Session Laws*, 1919, ch. 262, p. 1060.
[5] South Dakota *Session Laws*, 1919, ch. 102, p. 83.

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tion of statistics relative to Montana geology, mining, milling and metallurgy.[6]

Pennsylvania provides for a bureau of municipalities, under the department of internal affairs, which is required to gather, classify, index and make available statistical information and advice that may be helpful in improving the methods of administration and municipal development in the municipalities of the state. The bureau's duties are by no means purely statistical. It maintains a publicity service to assist in installing modern systems of accounting, employs an engineer to promote comprehensive plans for the probable future requirements of municipalities in respect to systems of traffic thoroughfares and other highways, transportation, sites for public buildings, parks and playgrounds and all public improvements to the advantage of municipalities as places of business or residence. This act repeals a former statute creating a division of municipal statistics and information in the department of labor and industry.[7]

New York in 1918 amended its law in relation to the organization of the bureau of statistics and information, under the labor commission. All cases of industrial poisonings, contracted as the result of the nature of the patient's employment, must be reported to the commission by the medical practitioner. In general the duty of the bureau is to collect such statistics from the records of the department or from special reports in order to supply the commission with full information relating to the operation and effect of the labor laws which it administers.[8]

Maine requires special statistics concerning the amount of logs and other timber cut, by board feet or cords, to be returned to the board of state assessors on blanks presented by it. The report is made by all owners or agents of lands classified as wild lands. In case such return is not made, the state board may secure the information in such manner as it deems advisable, adding the expense to the state tax next assessed against such lands.[9]

Fish Statistics. A comprehensive plan for the gathering of statistical information concerning commercial fisheries, the investigation of evidences of overfishing, and the conservation or development of

[6] Montana *Session Laws*, 1919, ch. 161, p. 311.

[7] Pennsylvania *Public Laws*, 1919, ch. 34, p. 45. (*Public Laws*, 1915, p. 689; 1917, p. 1111.)

[8] New York *Session Laws*, 1918, ch. 456, p. 1338.

[9] Maine *Session Laws*, 1919, ch. 77, p. 73.

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fisheries was initiated in California under the fish and game commission.[10]

Every person, firm or corporation engaged in the business of canning, curing or preserving fish or manufacturing fish meal, fish oil or fish fertilizer, or dealing in fish, mollusks or crustacea is required to make a return, in the nature of a receipt, showing the name of the fisherman and boat or the dealer from whom the fish were received, the date received, the weight by species and the price received by the fisherman. The record must show for what use the fish are intended, whether to be sold fresh or to be canned, cured, etc., and also whether the fish were taken in foreign waters or in the high seas off another state or foreign country. A triplicate copy is furnished to the fish and game commission, the dealer and the fisherman retaining the other copies. A separate record is required when the dealer catches his own fish. Masters of trawls and operators of the fishing gear must keep a record in a book furnished by the fish and game commission, showing the time and place of each haul, the approximate catch by species; the time of the voyage and the total catch of each species as weighed out when landed.

Fish canneries render an annual statement to the commission showing the location of the plant, kind of business, capital invested, number of persons employed, number of months operating and amount and kind of fish products canned, preserved or manufactured. Owners of boats engaged in fishing for profit must file a return showing the dimensions of the boat, motive power, number of crew, equipment and description of fishing gear.

The fish and game commission is empowered to board any boat or enter any such place of business and to examine all books of records containing an account of fish caught, bought or sold. The commission is further empowered to regulate and control the handling of fish or fishery products to prevent deterioration or waste; to establish grades to which the fish or products offered for delivery to canners or fresh fish markets must conform.[11]

Statistical Publications. Most of the states give authority for publication and dissemination of the statistical information gathered. Two states, however, specify that such information shall be issued as a handbook or blue book.

[10] California *Session Laws*, 1919, ch. 550, p. 1201.
[11] California *Session Laws*, 1919, ch. 551, p. 1203.

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The Arkansas commissioner of mines, manufacturing and agriculture is authorized to prepare a handbook of information concerning crops, soil, timber and industries of the state, covering the resources of each county and to publish this annually with such illustrations and maps as are appropriate.

The Colorado state board of immigration is authorized to publish annually a Colorado Blue Book containing information compiled concerning population, agriculture, mining, manufacturing or other industries of the state.

The work of the bureau of statistics in Indiana which was established in 1879 and discontinued in 1917, was given in 1919 to the legislative reference bureau, which is authorized to collect financial statistics of counties, cities and towns and to enter into a coöperative arrangement with the United States department of agriculture to collect and disseminate crop and live stock statistics.[12]

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Marketing Bureaus. Conspicuous among the 1919 legislative acts against profiteering and the high cost of living is the establishment of bureaus of marketing in Pennsylvania, Missouri and Nebraska. These bureaus are intended to benefit both the producer and the consumer in the marketing and the distribution of farm products.

The Nebraska act creates no new agency. It is little more than an anti-monopoly law, declaring that the already existing organizations which deal in farm products are public markets, and regulates the membership and the rights of members in those markets. Such markets include every organization which maintains or operates "a regular place of business or trading room for members only, in which the members sell or exchange grain or other farm products for themselves or others."[1]

Every market is required to be open to membership with equal rights and privileges with all other members, to any person, firm, company or corporation desiring to trade in such commodity on such market who shall make application for membership and whose methods of business operation or plan of organization shall not conflict with any regulation of such market. Unreasonable exclusions to membership

[12] Indiana *Session Laws*, 1919, p. 82.

[1] Nebraska, *Session Laws*, 1919, p. 989.

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and refusal to deal with any member on an equal basis with other members constitute "a monopoly in restraint of trade" and any trade in such organization is made unlawful.

The Pennsylvania and Missouri acts are more constructive and contain similar provisions. The Missouri bureau is administered by the state board of agriculture. In Pennsylvania, the bureau is an integral part of the department of agriculture and is thereby under the direction of the secretary of agriculture, but a subordinate director may be appointed.

The Pennsylvania act is the most specific and detailed of the three. It repeals the previous, but similar, acts of May 1, 1915, and July 17, 1917, and gives the bureau of markets power:

To "investigate the subject of marketing farm products, including the costs of marketing, to publish the results of such investigation, and to furnish advice and assistance to the public with reference to the marketing of farm products."[2]

"To gather and diffuse timely information concerning the supply, demand, prevailing prices and commercial movement of farm products, including quantities in common and cold storage."

To secure "the coöperation and assistance of all other agencies."

"To assist and advise in the organization and conduct of public markets, of coöperative and other associations for improving marketing conditions and activities among producers, distributors, and consumers."

"To investigate delays, embargoes, conditions, practices, charges, and in the transportation and storage of all farm products, which appear to be detrimental to a free, economical, and efficient marketing of such products."

"To take such lawful steps as may be deemed advisable to prevent waste of perishable products."

To "establish and promulgate standards for the grade and other classification of farm products."

To "establish and promulgate standards for receptacles for farm products by which their quality, value, or quantity may be determined."

To "enforce the standards of grades, weights and measures as promulgated by the United States Department of Agriculture."

[2] Pennsylvania, *Session Laws*, 1919, p. 809.

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To "make regulations governing the marks, brands, and labels, which may be required upon receptacles for farm products for the purpose of showing the name and address of the producer or packer or distributor, the quantity, nature, and quality of the product."

The director of the bureau of markets may designate employees of the bureau to make investigations and classifications of farm products upon request, and he may fix fees for such services. He may also license other competent persons as agents to perform the same services, in which case the agents collect such fees as the director may direct. These fees are to be covered into the state treasury.

The Pennsylvania law makes it the duty of any person within the state who is engaged in the marketing of farm products "to prepare and submit to the bureau, upon request . . . . reports of the quantity and conditions of any farm product held by or for storage" in the state. It also requires any person to "furnish the bureau upon request" special reports "concerning the demands for and the supply, consumption, costs, value, price, conditions, and period of the holding of any farm product which is or has been held by or for such person, in storage or otherwise." In order to further carry out these provisions the director and his employees are authorized to enter storehouses, stock yards, etc., or any other place where farm products are kept. It is a misdemeanor for any person to refuse to comply with the provisions of the act and such misdemeanor is punishable by fine or imprisonment or both.

Under the Missouri act, the bureau of markets is authorized:[3]

To "publish bulletins, including the names of producers, distributors, and consumers."

To "promote effectual and economical methods of marketing."

To "coöperate in the distribution of farm labor in so far as found acceptable to the state and federal labor departments."

To "coöperate with the United States department of agriculture, the United States bureau of markets, college of agriculture, and state experiment station, and especially with other states having laws providing for a marketing bureau."

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[3] Missouri, *Session Laws*, 1919, p. 109.

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Uniform Legislation—Legislative activity in 1919 is an evident manifestation of the fact that, while states are, in general, somewhat slow in adopting the model uniform laws proposed by the national conference on uniform state legislation, there is a very definite trend towards the more widespread acceptance of some of the uniform laws. The advantages which result from the elimination of conflict of law and uncertainty of law in various jurisdictions by the actual unification of state statutory provisions even to the extent of the use of identical language in all laws, has been more fully realized, apparently, during the past four years, for the legislation of 1916–19 has included 100 (or nearly 40 per cent) of the 257 uniform laws which have been passed by the various states and territories since 1892.

Property laws, the negotiable and quasi-negotiable instrument laws particularly, have found the most ready acceptance, while laws of a more social and less economic nature—the various uniform marriage and divorce acts, for example—have not met with as great favor.

Of the thirteen different uniform laws which were enacted in twenty-three states in 1919, eleven were of a commercial nature. The exceptions were the law for the extradition of persons of unsound mind and the patriotic uniform flag law, concerning the mutilation or defacement of the national or state flag or other emblems authorized by law, and their use in advertising.

The total number of uniform laws which were adopted in the sessions of 1918–19 was 47, comparing favorably with the 53 laws enacted in 1916–17.

The negotiable instruments act, which is one of the best known of the uniform laws and one which has found ready acceptance, was adopted by Texas in 1919.[1] This act is now a law in forty-seven states, Georgia alone having failed to adopt it. In consequence, this law, originally proposed in 1896, has become in fact a uniform state law.

Similarly the warehouse receipts act has been so generally adopted that the law on that subject may well be considered uniform for all states. Idaho, Montana, Oklahoma and Texas[2] adopted the law in 1919. The Idaho law is styled the "bonded warehouse law," but the provisions of the uniform warehouse receipts law are definitely accepted by the act. A Georgia law of 1918[3] provided for negotiable warehouse

[1] *Laws*, regular session, 1919, ch. 123.

[2] *Session Laws*, 1919, Idaho, p. 484; Montana, ch. 209; Oklahoma, p. 383; Texas, (regular session), ch. 126.

[3] Georgia, *Session Laws*, 1918, p. 246.

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receipts, but dealt with cotton warehouses only. There now remain but seven other states which have not accepted the provisions of the uniform law. These are Arizona, Indiana, Kentucky, Mississippi, New Hampshire, Oklahoma and South Carolina.

The uniform sales act, first approved in 1906, found favor in four states, Idaho, Iowa, Oregon, and Tennessee,[4] and twenty-two states now have this law.

The uniform bills of lading act was adopted by two more states, California[5] and North Carolina. The California law is a substitute for the law of 1915 which had embodied the essential provisions of the model law. Twenty-one states have now unified their statutory provisions on this subject.

None of the other uniform laws which have been proposed have met with such widespread acceptance. The fraudulent conveyance act, however, which was first proposed in 1918, was immediately accepted in eight states,—Arizona, Delaware, Michigan, New Hampshire, New Jersey, South Dakota, Tennessee and Wisconsin.[6] Similarly the conditional sales act, approved in 1918, was speedily adopted in five of the same states,—Arizona, Delaware, New Jersey, South Dakota and Wisconsin.[7] The uniform flag act, proposed in 1917, was adopted in six states,—in Louisiana and Maryland in 1918, and in Arizona, Maine, Washington and Wisconsin in 1919,[8] although the Wisconsin law does not follow the phraseology of the model act.

The uniform partnership act, which had been accepted in seven states in 1917, was adopted by four more states,—Virginia taking action in 1918, and Idaho, New Jersey and New York following in 1919.[9] The limited partnership act was more popular, eight states adopting it in 1918–19, the Maryland and Virginia sessions of 1918

[4] *Session Laws*, 1919: Idaho, p. 443; Iowa, p. 507; Oregon, p. 29; Tennessee, p. 303.

[5] California, *Session Laws*, 1919, p. 762.

[6] *Session Laws*, 1919: Arizona, p. 204; Delaware, p. 561; Michigan, p. 546; New Hampshire, ch. 63; New Jersey, p. 500; South Dakota, p. 203; Tennessee, p. 402; Wisconsin, ch. 470.

[7] *Session Laws*, 1919: Arizona, p. 38; Delaware, p. 461; New Jersey, p. 461; South Dakota, p. 123; Wisconsin, ch. 672.

[8] *Session Laws*, 1919: Arizona, ch. 8; Maine, ch. 156; Washington, ch. 107; Wisconsin, ch. 113.

[9] *Session Laws*, Virginia, 1918, p. 541; Idaho, 1919, p. 493; New Jersey, 1919, p. 481; New York, 1919, p. 1162.

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both accepting the act, and Idaho, Minnesota, New Jersey, New York, Tennessee and Wisconsin adopting it in 1919.[10]

Four other model uniform laws made somewhat more conservative progress. The uniform law for the extradition of persons of unsound mind was adopted by two states only,—by Maryland in 1918, and by Wisconsin in 1919.[11] The probate of foreign wills act was approved by the New York and Tennessee legislatures of 1919, and the cold storage law and the domestic acknowledgments act were also accepted in Tennessee.[12]

Tennessee adopted six uniform laws; Wisconsin, five; Idaho and New Jersey, four; Arizona and New York, three; Delaware, Maryland, South Dakota, Texas and Virginia, two; and in twelve other states one uniform law was passed.

Every state except Georgia and Oklahoma now has at least two of the uniform laws on their statute books. Thirty-seven uniform laws have been drafted and approved by the national conference, and of these twenty-seven have now been adopted in from one to forty-seven states. Wisconsin has twenty-one of these laws, Maryland and Massachusetts have twelve each, Illinois has accepted eleven, Michigan nine, and New York seven.[13]

If the present tendency is continued several more of these acts will soon become uniform state laws in fact as well as in name.

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[10] *Session Laws*, Maryland, 1918, p. 664; Virginia, 1918, p. 564; Idaho, 1919, p. 474; Minnesota, 1919, p. 653; New Jersey, 1919, p. 471. New York, 1919, p. 1162; Tennessee, 1919, p. 343; Wisconsin, 1919, ch. 44.

[11] *Session Laws*, Maryland, 1918, p. 310; Wisconsin, 1919, ch. 277.

[12] *Session Laws*, 1919, New York, p. 921; Tennessee, pp. 139, 201, 296.

[13] See Proceedings National Conference of Commissions on Uniform State Laws, Twenty-Ninth Annual Meeting, Boston, Mass., 1919; table opp. p. 160.

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JUDICIAL DECISIONS ON PUBLIC LAW

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Advisory Referendum for Instructing Constitutional Convention—Power of Court of Equity to Enjoin. Payne v. Emmerson (Illinois, December 17, 1919, 125 N. E. 329). This was a taxpayer's action seeking to enjoin the submission to the voters of Illinois of three questions in accordance with the provisions of the so-called Public Opinion Act of 1901. The three propositions were all in the form of instructions for the guidance of the members of the constitutional convention of Illinois which was shortly to assemble. Two of the proposals related to the initiative and referendum and one to the problem of public ownership of public utilities. The submission of these propositions was attacked on the ground that the questions were not questions of public policy within the meaning of the Public Opinion Act, which contemplated the reference to the people only of questions relating to legislative policy and not matters respecting constitutional changes. It was also contended that it was a constitutional right of the citizens to have the delegates to the constitutional convention unfettered by any instructions from the people and entirely free to exercise their own best judgment upon the questions they were called upon to consider.

The court did not discuss these contentions upon their merits but held that the case did not present an opportunity for relief in equity. A court of equity can intervene to protect civil rights but not political rights. The right, if any, which is endangered by the referendum complained of is political in character. Elections are not matters with which a court of equity can interfere without manifest danger to the liberties of the people, and the actual financial loss arising from the cost of such election which any one taxpayer would suffer is insufficient to warrant the issuance of an injunction for its protection.

Display of Flag of Organization Advocating Principles Antagonistic to Existing Government, Laws, or Constitution. Ex parte Hartman (California, March 13, 1920, 188 Pac. 548). An ordinance of the city

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of Los Angeles made it a penal offense for any person to display publicly or privately, or to have in possession, any flag or insignia of any kind of any nation, sovereignty, society or organization espousing for the government of the people of the United States principles or theories of government antagonistic to the Constitution and laws of the United States, or to the form of government thereof now existing. This ordinance the court held to be unconstitutional as violating the "rights guaranteed . . . . by the Constitution of this country," although those rights are not specifically enumerated. It is pointed out that the ordinance is couched in language broad enough to forbid the display of the flag or emblem of organizations peaceably urging the adoption of amendments to the federal or state constitutions even though such proposals are innocent and harmless. In a sense any political change may be regarded as antagonistic to the existing order of government and to punish the peaceful and orderly espousal of such change goes beyond the constitutional authority of the city.

Eminent Domain—Meaning of "Public Use"—Exclusion of Apartment Houses from Residence Districts. State v. Houghton (Minnesota, October 24, 1919, 174 N. W. 885; same, Minnesota, January 23, 1920, 176 N. W. 159). These cases present an interesting judicial debate upon the question whether by use of the power of eminent domain and the payment of compensation apartment houses may lawfully be excluded from residence districts in cities. By an act of 1915 the legislature of Minnesota authorized cities of the first class to establish residence districts upon the petition of fifty per cent of the property owners in the district sought to be affected, and to exclude from such residence districts a long and varied list of industrial and mercantile establishments together with "apartment houses, tenement houses, flat buildings." The cities were authorized to effect the exclusion of these undesirable buildings or establishments by means of eminent domain and the payment of compensation. The compensation was to be paid out of assessments upon the property of the residents of the districts thus benefited. In this case a mandamus was asked to compel the building inspector of Minneapolis to issue a permit for an apartment in one of these restricted districts.

On the original hearing the court held that this statute and the ordinance of the city council of Minneapolis passed in pursuance of it provided for an unconstitutional use of the power of eminent domain. The majority opinion, written by Judge Dibell, narrowed the issue of

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the case to the question whether the condemnation of property rights provided for was for a "public use" or not, inasmuch as it is well established that private property may be taken only for a public use. It was pointed out that the property condemned under these enactments, property in the nature of an easement or restricted use, was not property of which the public could make any actual use. The public gained by such condemnation no right to enter upon or use the property affected. The "use" acquired was merely negative in character. The court further declared that the "public use" for which the property was being taken was public only in the sense that it worked to the advantage and benefit of the surrounding property owners who desired protection from the erection of ugly or inappropriate structures. If the desire or need for protection of this kind is to be regarded as constituting a "public use" for which private property may be taken by right of eminent domain the limits of the doctrine are hard to fix and much injustice may result. "When the humble home is threatened by legislation upon aesthetic grounds, or at the instance of a particular class of citizens who would rid themselves of its presence as not suited in architecture or in other respects to their own more elaborate structures, a step will have been taken inevitably to cause discontent with the government as one controlled by class distinction, rather than in the interests and for the equal protection of all." There is, of course, no question of the police power raised in this case. In fact the supreme court of Minnesota had in an earlier decision held that apartment houses could not be excluded from residence districts by a mere exercise of the police power since there was nothing in their character to justify the conclusion that they could properly be classed as nuisances (State v. Houghton, 134 Minn. 226, 158 N. W. 1017).

Two justices dissented from the decision of the majority in this case and filed a brief opinion in which they laid emphasis upon the undesirable results of allowing apartment houses to invade residence districts without restraint and expressed the view that "it is about time that courts recognize the aesthetic as a factor in the affairs of life," and that aesthetic protection is a proper field of legislative control. On a rehearing of the case the dissenting justices won a majority of the court to their point of view, the decision just discussed was reversed, and the statute and ordinance in question were held constitutional. The opinion of Judge Holt admitted that the public received no actual, physical use of the property taken by eminent domain, and that only a portion of the public could reasonably be said to be benefited by the taking. His opinion is in effect a vigorous protest against a narrow and in-

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elastic definition of the term "public use" in the law of eminent domain. The meaning of "public use" must expand with time and the needs of society and purposes which are intimately connected with the welfare of the community or a substantial portion of it may legitimately be furthered by the condemnation of private property rights. Apartment houses are a menace to the welfare of people living in residence districts. They destroy the beauty of the neighborhood and bring about depreciation in the value of surrounding property. This results in loss to the owners of the property affected and loss to the city in the form of diminished taxable values. "Giving the people a means to secure for that portion of a city wherein they establish their homes, fit and harmonious surroundings, promotes contentment, induces further efforts to enhance the appearance and value of the home, fosters civic pride, and thus tends to produce a better type of citizens." It is the conclusion of the court that property condemned for such purposes is condemned for a public use.

It will be observed that the clash of opinion in these two cases presents an issue by no means new. There have long been two distinct interpretations applied to the term "public use" in the law of eminent domain. One of these would make "public use" synonymous with "use by the public" and thereby limit the taking of private property to the cases in which the public actually acquires title and possession. The opinion of the majority in the first case examined approximates this point of view. This doctrine has the very obvious advantage of providing an explicit and unvarying test by which courts may determine whether or not the use for which property is being condemned is public or private. It is doubtless this definiteness which has commended it to the approval of an overwhelming majority of courts and commentators (Lewis, Eminent Domain, Secs. 257–258). The opposing view is that "public use" in eminent domain should be construed to mean "public welfare" and that any taking of private property which can be justified upon this broad ground may be sustained. It is this doctrine upon which Judge Holt bases his opinion in the second case. While it commands the adherence of only a small minority of the courts which have passed upon it, strong pressure is being exerted in its behalf. The adoption of this more liberal doctrine of public use seems necessary if the condemnation of various types of easements, or excess condemnation, are to be employed in the working out of city planning programs and it seems probable that its acceptance will tend to spread in spite of the dangers which are undoubtedly connected with it.

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Freedom of Speech—Power of States to Prohibit Disloyal Language During War. Ex parte Meckel (Texas, Court of Criminal Appeals, May 21, 1919, on motion for rehearing March 19, 1920, 220 S. W. 81). The legislature of Texas passed a Disloyalty Act making it a felony for any person to utter in the presence of any other person language disloyal to the United States in time of war, or language which, if uttered in the presence of an American citizen, would be reasonably calculated to provoke a breach of the peace. Meckel was convicted under the act and on petition for a writ of habeas corpus urged that the act was unconstitutional because it violated the guarantee of freedom of speech found in the constitution of Texas, and because it was an attempt on the part of the state to exercise war power which belonged exclusively to Congress. The court of criminal appeals construed the act as one designed to prevent breaches of the peace which might occur if disloyal language were uttered in the presence of American citizens. Viewed in this light the court found no difficulty in upholding the statute as a legitimate exercise of the police power of the state. It suggested, however, that if the act were interpreted as creating an offense other than that of provoking breaches of the peace there would be grave doubts as to its constitutionality.

On motion for rehearing the court adopted a different view of the meaning and intent of the statute. This new construction was urged by the state. Under it the act would provide, as paraphrased by the court, "If any person in time of war, in the presence and hearing of another person . . . . use any language . . . . which language . . . . is of such a nature as that in case it is said in the presence and hearing of a citizen of the United States, it is reasonably calculated to provoke a breach of the peace, such person shall be guilty of a felony." So construed the court held the statute unconstitutional upon two grounds. In the first place, it abridged freedom of speech as guaranteed by the bill of rights of the state constitution because it penalized the utterance of disloyal language even when such language was spoken under circumstances which would not tend to produce a breach of the peace, namely in the presence of persons who were not American citizens. The power of the state to curb freedom of expression is limited to such measures as will prevent breaches of the peace and does not extend to the penalizing of language which is disloyal per se. In the second place, the punishment of persons who speak disloyally during time of war but do not incite breaches of the peace is the function of the federal government exclusively.

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"The prohibition of the use of disloyal language per se as a war measure, is admittedly the subject of federal legislation, and not within the purview of the regulatory power of the states."

This decision seems to be unique. It is the first case apparently in which a statute punishing disloyal utterances during time of war has been held to invade the freedom of speech guaranteed by constitutional provision. In holding that the state may not legislate is such a manner as to aid the federal government in the exercise of the war power the opinion in this case is in conflict with the decisions of the courts of Minnesota[1] and New Jersey.[2] In each of these cases it was held that the state could aid in the prosecution of the war, provided only that the state laws enacted for that purpose did not conflict with congressional legislation upon the same subject. This seems to be the correct rule, not only with reference to the war power of Congress but also with respect to other spheres of federal authority, and it is doubtful if the doctrine of the Texas court of criminal appeals in this case will meet with approval upon this point.

Involuntary Servitude—Liability to Master of One Hiring Servant Who Breaks Contract of Employment. Shaw v. Fisher (South Carolina, February 23, 1920, 102 S. E. 325). This was an action for damages brought against the defendant for enticing away from the plaintiff a servant who had contracted with him to work as a share cropper for a period of one year. The defendant employed this servant after having notice that he was under contract to the plaintiff. The court decided that the defendant's conduct in the matter was not actionable. While the common law recognized a right of action in such a case the Thirteenth Amendment to the federal constitution abolished any such common law doctrine. The validity of a statute or rule of law must be determined by its operation and effect. To allow the plaintiff to recover damages from any one who employed a servant who broke a contract of employment with the plaintiff would in effect compel the servant to remain against his wishes in the employ of the plaintiff since it would make it impossible for him to secure work elsewhere. The servant has the right at any time to break his contract of service and be subject only to liability for damages. Any pressure direct or indirect which deprives him of this right must fall within the prohibition against involuntary servitude.

[1] State v. Holm, 166 N.W. 181, see *American Political Science Review*, May, 1918, p. 286.

[2] State v. Tachin, 106 Atl. 145, *idem*, August, 1919, p. 498.

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Police Power—Power of State to Regulate Ordinary Mercantile Prices. A. M. Holter Hardware Co. v. Boyle (United States District Court, Montana, January 13, 1920, 263 Fed. 134). The legislature of Montana enacted a statute creating a trade commission and giving it power to regulate business and to "establish maximum prices or a reasonable margin of profit" in respect to all commodities. Action was instituted in this case to restrain the enforcement of this law. The United States district court held the act void as a deprivation of property without due process of law. It has long been established that the power of government to regulate prices extends only to businesses which are affected with a public interest and not to the sale or production of the ordinary commodities of commerce. While the list of businesses which are thus affected with a public interest has expanded with the passage of time, the courts of this country from the Supreme Court down have adhered to the doctrine that the element of public interest must always be present to justify the control of prices. The business must be one "wherein its proper conduct concerns more than the parties to any single transaction, wherein by reason of peculiar circumstances the business sustains such relation to the public that they are affected by its consequences." This element of public interest is entirely lacking in the forms of business which the statute seeks to subject to control. The act therefore interferes unreasonably with private property rights, with individual freedom of contract, and accordingly amounts to a deprivation of property without due process of law.

Primary Election—Right of a Democrat to Become a Candidate for Republican State Committeeman. German v. Sauter (Maryland, February 18, 1920, 109 Atl. 571). This case is instructive as showing the pitfalls which lie in wait for the careless legislator. The general laws of Maryland relating to primary elections provide that it shall be the duty of the supervisors of elections to print on the official ballots the names of all candidates for public offices or for offices or committee membership in political parties, provided that each candidate pays such fees as may be required and files a certificate setting forth his residence, the name of the office for which he is a candidate and the party to which he belongs. The law does not require that a candidate for nomination at the hands of a particular political party need be a member of that party. The court held in this case that they had no authority to add to the requirements or qualifications for nomination

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set forth in the law and that therefore Sauter, who was an affiliated Democrat and who was consequently under the law unable to cast a vote in a Republican primary, could compel the supervisors of elections to place his name on the ballot as a candidate for Republican state committeeman.

Referendum—Applicability of Emergency Clause Provision to Acts Passed by Special Session of Legislature. State v. Olson (North Dakota, January 16, 1920, 176 N. W. 528). A special session of the legislature of North Dakota convened in November 1919 and passed a substantial number of acts designed to reduce the authority of several of the executive officers of the state who had been involved in a political disagreement with the governor. At the close of the session the legislature passed an act providing that all acts passed at any special legislative session should go into effect within ten days of the date of enactment unless the legislature by a vote of two thirds shall declare them to be emergency measures in which case they shall be effective immediately. The constitution of North Dakota provides that the acts of the legislature shall not go into effect until the first day of July following the close of the session unless the act shall by a two-thirds vote of the assembly be declared an emergency measure. During the period in which they are thus suspended the acts of the legislature are subject to referendum by the people upon the filing of a petition in accordance with the provisions set forth in the constitution. Thirty-nine of the acts passed by the special session of 1919 were passed by less than the majority of two-thirds requisite to make them emergency acts and petitions calling for their referendum to the people were promptly filed. The question whether these acts were constitutionally subject to referendum is the point involved in this case.

It was urged upon the court that the constitutional provisions respecting emergency legislation were not applicable to special sessions of the legislature but only to the regular sessions, and that therefore the special session had the power to put its enactments into operation without delay irrespective of the constitutional clauses above mentioned. This view was supported by the argument that to suspend the operation of statutes passed by a special session until the first of the following July would mean in some cases a suspension of practically a year and produce a situation which could not have been within the contemplation of the framers of the constitutional provisions in question. The court found itself unable to agree with this point of view.

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It declared that the constitution recognized no difference in powers or duties between a regular and a special legislative session and that there was no basis upon which to rest the view that special legislative sessions should be exempted from the application of the clause relating to the passing of emergency measures. The act providing that the laws passed by the special session should become operative within ten days after enactment was accordingly unconstitutional, and the acts which had not been declared by the requisite two-thirds majority to be emergency measures were subject to referendum in the usual manner.

Suffrage—Extension to Women in Primary Elections by Legislative Act. Hamilton v. Davis (Texas, Court of Civil Appeals, December 13, 1919, 217 S. W. 431). A statute of 1918 granted to female citizens who have all the qualifications of electors except that of sex the right to vote in primary elections. The appellant was a candidate for nomination for the state legislature and sought an injunction restraining the enforcement of the act on the alleged ground of its unconstitutionality. His contention was that the word "election" as used in section 2, article 6 of the Texas constitution defining the qualifications of voters includes primary elections. The court rejected this view and upheld the validity of the law. While previous decisions had held that primary elections were within the meaning of the constitutional provisions giving the courts jurisdiction in cases of contested elections, the court declared that it was unnecessary to attach the same meaning to the word election wherever it was used. It should be construed in the light of the purpose of the provision in which it was used. While it should be interpreted broadly in the clause relating to contested elections so that the remedial purpose of that provision might have the fullest possible effect, it should be construed strictly when used in the clause defining the qualifications of voters so as not to "thwart the effort of the legislature to extend a valuable privilege to a worthy class of citizens." The correctness of this construction is further emphasized by the fact that state legislatures have frequently established different qualifications for voting in primary elections from those which apply in general elections. It is common for primary statutes to require test oaths of party allegiance as a condition of voting in the primary, although the requirement of such oaths would be clearly unconstitutional if applied to regular elections. If a legislature may enact that only members of political parties shall participate in primary elections it may with equal propriety extend that privilege to women.

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Taxation—Public Purpose—Reclamation of Waste Lands for Homestead Purposes. State v. Clausen (Washington, March 30, 1920, 188 Pac. 538). An act of the legislature of Washington passed in 1919 authorized the creation of a state reclamation board endowed with very wide powers. This board was authorized to acquire for the state private property suitable for farms and farm laborers' allotments, to make such improvements as might be necessary to render the land habitable, to allot it to applicants either by lease or sale in accordance with restrictions set forth in the statute. In the allotment of these homesteads soldiers were to be given preference. This case hinged upon the question whether the expenditure of the money of the state for such a purpose was constitutional in view of the well established rule that taxes may be levied only for a public purpose. It was alleged that the expenditures provided for were for the benefit of private individuals and were not for a public purpose.

The court held that the purpose for which the proposed expenditures were to be made must be regarded as public. It comments at length upon the difficulty of drawing a distinct line between public purpose and private purpose in taxation, and declares that in the border line cases the question frequently resolves itself into one of opinion as to wisdom and expediency rather than a question of law in the strict sense. Courts must be exceedingly cautious not to usurp the functions of the legislature in these cases and must accord deference to the legislative judgment in all cases of doubt. Public purpose in the law of taxation is a term which expands with the progress of civilization. To define it only in terms of custom and usage would mean complete stagnation in the law. Purposes which were not regarded as public in years gone by have come to be recognized as proper objects of taxation now. It cannot be denied that the act in question contemplates the expenditure of public money for a purpose from which the state at large will reap substantial benefits. While opinions differ as to the legal propriety of these expenditures there is not sufficient doubt as to the public purpose of the proposed taxation to warrant the court in reversing the legislative determination upon that point.

A brief but vigorous dissenting opinion urged that the statute provided for the levying of taxes for a private purpose and that the majority opinion declaring the purpose public "stretched to the breaking point all fundamental ideas of what is meant by that term." Relying chiefly upon the well known case of Lowell v. Boston, 111 Mass. 454, the dissenting justices concluded that no public purpose was served "by this attractive bit of paternalistic legislation."

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FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

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Changes in British Parliamentary Procedure. One of the most interesting of the developments arising from the extensive legislative program which faced the first British Parliament under the Franchise Act of 1918 was the drastic amendment in February, 1919, of the rules of procedure of the house of commons. The address from the throne stated the necessity and the purposes of the proposed changes, declaring:

"A large number of measures affecting the social and economic well-being of the nation await your consideration, and it is of the utmost importance that their provisions should be examined and, if possible, agreed upon and carried into effect with all expedition. With this object in view, My Government will invite the consideration of the House of Commons to certain proposals for the simplification of the procedure for that House which, it is hoped, will enable delays to be avoided, and give its members an increasing opportunity of taking an effective part in the work of legislation."

In the debate upon the address, Mr. Lloyd George foreshadowed the nature of the government's proposals by saying:

"I am certain that our present methods of examining legislation, of having 600 men scrutinizing every line, every word, every comma, for weeks in the presence of the Press, is a futile method of transacting business. . . . As long as the House of Commons accepts the main outline of the measure, it is fatal to business to insist upon every member of the House taking part in a close scrutiny of every word."

And when the attorney-general presented the plan he declared:

"The object of the proposals is at least threefold. It is, in the first place, to save the time of the House. It is, secondly, to accelerate the progress of business, and also it is, by avoiding waste of time and energy, to improve the real opportunities of criticism and discussion."

The changes which were then outlined included, first, an increase in the number and importance, and a decrease in the size, of the standing, or grand, committees; second, a rule regularizing kangaroo closure by

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making the power of selecting amendments for debate a permanent and no longer a temporary attribute of the authority of the chair; third, the reference of the estimates, with certain exceptions and under certain restrictions, to standing committees; fourth, several less drastic changes in procedure designed to save time in the passage of bills through the house. Three days were occupied by the discussion of these proposals, and the debate furnishes one of the best expositions ever given of the theory and practice of the procedure of the house of commons. In the end most of the government proposals were adopted as standing orders, although some modifications were made, and the rule empowering standing committees to consider the estimates was passed for the session only.

The purpose of the changes in the committee system was frankly set forth by Mr. Bonar Law as, "getting the bulk of the business done by committees. And," he added, "that does mean a real revolution in the procedure of the house of commons." In number the committees were increased from four to six, and in size decreased from 60–80 to 40–60, with the provision that the committee of selection should have power to add not less than ten nor more than fifteen members to a standing committee in respect of any bill referred to it, to serve during the consideration of that bill. The provision that at least ten "experts" should be added was the result of a desire in the house to assure the competency of the committees to handle the important bills now proposed to be referred to them. It was not, however, applied to the committee on Scottish bills, which committee was continued, as was that for the consideration of bills relating exclusively to Wales and Monmouthshire. The chairmen's panel was increased from 4–8 to 8–12, while the quorum for standing committees was left at twenty.

Besides adding to the number of the grand committees, the new rules increase their working capacity by allowing them to sit while the house is in session. Prior to 1919 no such committee could sit while the house was sitting except in pursuance of a resolution moved by the member in charge of the bill before the committee and decided without debate; nor could any such committee sit before four o'clock without an order of the house. The new rule, S. O. 47 (1), provides:

"Standing committees may sit during the sitting, and notwithstanding any adjournment, of the house. On a division being called in the house, the chairman of a standing committee shall suspend the proceedings in the committee for such time as will, in his opinion, enable members to vote in the division."

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Further, rule 49A provides:

"In order to facilitate the business of standing committees, a motion may, after two days notice, be made by a minister of the crown at the commencement of public business, to be decided without amendment or debate, 'that this house do now adjourn,' provided that if on a day on which a motion is agreed to under this standing order leave has been given to move the adjournment of the house for the purpose of discussing a definite matter of urgent public importance, Mr. Speaker, instead of adjourning the house, shall suspend the sitting until a quarter past eight of the clock."

The government declared, however, that it would use the authority thus granted not regularly, but only as a last resort.

These rules, together with that permitting the reference of the estimates to a standing committee, and the avowed determination of the government to send "upstairs" all bills but the finance bill, the appropriation bill, and small bills of a noncontentious kind indicate a realization by all concerned that the legislative capacity of the parliamentary machine was entirely inadequate for the passage of measures made imperatively and urgently necessary by post-war conditions. The delegation of legislative power, the removal of many members from the house to the committee rooms while the house is in session, and the consequent rush through the division lobbies of members who have not heard debated the question upon which they are voting were declared by many members to be changes which would destroy both the prestige and the self-respect of the house of commons. The government's unanswerable reply was that without these changes of procedure the house could not by any possibility put through the program of social and industrial reform which the situation demanded, and that its failure to do so with reasonable promptitude would result not only in a loss of prestige for the house of commons, but in the destruction of popular belief in representative government as it exists in England. This argument, of course, was used in connection with all of their proposals.

The chief provision made by the new procedure for speeding up bills in the house itself relates to the selection of amendments for debate, and is as follows (S. O. 27A):

"In respect of any motion or any bill under consideration either in committee of the whole house or on report, Mr. Speaker, or in committee, the chairman of ways and means, and the deputy chairman, shall have power to select the new amendments or clauses to be pro-

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posed, and may, if he thinks fit, call upon any member who has given notice of an amendment to give such explanation of the object of the amendment as may enable him to form a judgment upon it."

Under the old rules this power could not be exercised by the chair except under authority of a special order in each case—an order which it usually required a considerable amount of time to pass. The new rule obviates such delays, makes unnecessary closure by compartments, by which whole clauses were voted with no discussion whatsoever, and provides a reasonable method for the selection of those subjects the discussion of which is most desirable. A possible drawback is the addition to the constantly increasing burden which has been laid upon the speaker during recent years.

Other changes which were made to reduce delay in the passage of bills through the house may be noted.

S. O. 30 was amended to provide that when the speaker or chairman deems a division "unnecessarily" claimed he may take the vote of the house by calling upon members who support and who challenge his position to rise in their places, "unnecessarily" having been inserted in place of "frivolously or vexatiously" in order to enable the rule to be applied in a wider range of cases.

S. O. 31A eliminates superfluous divisions at second and third readings by providing that, "If on an amendment to the question that a bill be now read a second time or the third time it is decided that the word 'now' or any words proposed to be left out stand as part of the question, Mr. Speaker shall forthwith declare the bill to be read a second time or the third time, as the case may be."

S. O. 40A provides that a motion to recommit a bill, if opposed, shall be discussed under the ten minute rule, only the member who moves recommittal and one other member to be heard.

S. O. 7A exempts from the eleven o'clock rule proceedings upon the report of the committee of ways and means, and committees authorizing the expenditure of money, except the committee of supply.

S. O. 71A provides that when a resolution authorizing the expenditure of money in a certain bill is sanctioned by a committee, and notice is given, the report stage can be taken at once instead of being deferred to another day.

S. O. 71B makes it possible to receive a resolution of the committee of ways and means authorizing the issue of money out of the consolidated fund, and to pass this money bill through the report stage and third reading on the same day. These stages frequently had been

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taken in one day under special order of the house. The new order makes such procedure the regular one.

Although somewhat technical, all of these new rules are clearly designed to expedite the business of the house, both by simplifying the normal procedure, and by reducing the opportunities for deliberate obstruction.

The most striking changes in procedure which the needs of the new order in England has compelled, however, were those which permit the discussion of the estimates in standing committee. From 1707 it had been the rule of the house that money bills should be considered only in committee of the whole. Because such consideration was supposed to give the house an opportunity to scrutinize and to criticise the conduct of every part of the government when the appropriation for that part was voted, the provision had long been regarded as one of the cornerstones of parliamentary supremacy. The proposal to rescind the rule met with determined resistance. It was declared that the primary business of Parliament was not legislative but critical, and that to deprive the house as a whole of its traditional power to criticise and control the executive through the discussion of the estimates would destroy its most useful function. The discussion, however, gave rise to a general admission that the existing system did not in practice give the house of commons an effective control over the estimates in their financial aspects; and upon the abandonment by the government of its proposal to reduce the number of days for the consideration of supply in the committee of the whole from twenty to twelve the great innovation was adopted, for the session only. The rules provide:

1. All estimates except Votes A and 1 (personnel and pay) of the army, navy, and air force estimates shall be referred to a standing committee instead of to the committee of supply.

2. The estimates shall be allotted to the standing committees by the speaker, and shall be considered by them under the customary procedure of the committee of supply.

3. Upon the adoption of a motion made by a minister any specified estimates or votes shall be withdrawn from the standing committees and considered in committee of supply.

4. The speaker shall leave the chair forthwith when the orders of the day for the consideration of any votes other than a vote of credit in the committee of supply shall be read.

5. A standing committee may report from time to time resolutions upon which it has agreed, and these shall be proceeded with as though they had been reported from the committee of supply.

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6. The government shall have authority to fix the rotation in which votes are to be taken in standing committee, and to determine whether estimates of bills shall be considered on any particular day.

7. S. O. 15, regulating the business of supply, shall apply only to such business in the house or in a committee of the whole; supply shall no longer be the first order of the day on Thursday; the rule which required the submission of new estimates not later than two days before the committee of supply is closed shall have no effect.

8. The committee of selection shall have the power to add not less than ten nor more than fifteen members to any standing committee to which estimates are referred, to serve on that committee during the consideration of any specified estimates.

Viewed in their entirety these modifications of procedure very evidently are the logical development of tendencies in the evolution of standing orders which, as Dr. Redlich points out, have governed changes made in the rules since 1832. They were made to save the time, or to alter the distribution of the time, of the house, and to reduce further the possibility of obstruction. But although in adopting them the house made serious efforts to increase its working capacity, it cannot be said to be satisfied with the results of the innovations. Within a few months it became evident that while the house had not vastly increased its legislative output by simplifying its procedure and dividing itself by six, it had introduced a system which was giving rise to other ills, some of them of a disquieting nature. As had been predicted, the grand committees drew so many members from the house itself that the discussion of constitutional measures of the utmost importance was regularly conducted before empty benches. Furthermore, the standing committees in many instances deprived the house of the control which it had been wont to exercise over the details of great bills. This had been foreseen; but in practice the house did not like the change. And the committees themselves, even the committee to which the estimates were referred, had great difficulty in regularly securing quorums. Members complained of being expected to be in several places at the same time, and the house generally felt overworked and dissatisfied.

These sentiments found expression in a debate early in June, 1919, on the proposal to create a parliamentary body to consider devolution. In seconding the motion for such a body, Mr. Murray Macdonald probably expressed the consensus of opinion concerning the situation when he said that the motion:

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"rested on the opinion that Parliament had more work than it could adequately perform. . . . Only two alternative remedies had been suggested. The first was by changes in the rules regulating business in the house; the second was that embodied in the motion under consideration. Many changes in procedure had been made, all with the same object, and they had totally failed to accomplish their purpose."

The result was the appointment of the speaker's conference on devolution; and it is safe to assume that the recognition that the new rules have not made, and that no rules can make, it possible for Parliament to perform its present duties satisfactorily, will go far towards securing favorable consideration for whatever proposals this conference may eventually make.

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Swiss Referendum on the League of Nations. The Swiss referendum of May 16 on the League of Nations was the most important vote of its kind in the history of the republic. All other countries entering the league thus far have done so by parliamentary and executive action, that is, through purely representative means. Switzerland alone referred the question to the direct decision of her electorate. To Americans her action is of interest, not only because of its thoroughly democratic character, but also because we are confronting the same question as the paramount issue of our domestic and foreign politics at the present time.

There can be no doubt that the Swiss people understood thoroughly the fateful nature of the decision they were called upon to make. They witnessed the great war from within its very midst; in spite of their neutrality they suffered and are suffering considerably from its consequences; and they have followed every step taken since the armistice with the deepest interest. A vigorous campaign of education carried on by the press, by political parties, and by propagandist committees of every description preceded the referendum vote itself. With few exceptions the discussion of the issue was conducted upon a high plane. Some vague charges were made of the use of Entente gold to influence the vote, but they were speedily denied and discredited. In spite of the deepest feeling on both sides, personalities were conspicuously absent. A minor point of interest may be found in the active and effective part taken in the campaign by many prominent clergymen, both Protestant and Catholic.

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Acceptance of membership in the league was strongly favored by the powerful Independent Democratic (Radical) party, the Liberal Democratic (Protestant Conservative) party, the recently formed anti-bolshevist Peasants' party, the Christian Social party, and the *Grütlianer*. The Catholic Conservatives were divided, some of their most eminent leaders, both lay and clerical, being found in opposing camps. The Socialists who have accepted bolshevist leadership fought the league with all their accustomed arguments and bitterness. Curiously enough, the same attitude was taken by a group of the higher officers of the Swiss army, led by Ulrich Wille, the former general in chief. Party lines were more or less cut across, however, by racial, linguistic, religious and personal prejudices.

A very marked influence upon the referendum was exerted by the federal council, all seven members of which not only favored the league but also campaigned for it vigorously throughout the country. Further, the federal council on May 7, officially issued a powerful appeal to the Swiss people urging them to vote affirmatively. This appeal expressed the deepest conviction that "a decision of the people against the league would bring with it irreparable damage to the prosperity of Switzerland, to the unity of the country, and to the respect which it enjoys abroad. It would involve the gravest danger to our commerce, our industry, and our agriculture. The League of Nations will gradually unite all the states of the world. Already it embraces four-fifths of mankind. The League of Nations aims at the protection of labor; it assures just consideration to the mutual commerce and intercourse of its members; it promotes the development of international law. It opens the way to gradual disarmament and seeks to settle controversies arising between nations by judicial arbitration and peaceful mediation. Above everything else it will hinder or make difficult the beginning of armed conflicts. Switzerland cannot refuse her coöperation when humanity undertakes by a broadly devised plan to bring justice and peace to the world."

To partisans and opponents of the league alike the principle of neutrality, consecrated by the history and imbedded in the constitution of Switzerland itself, was the central point of the whole controversy. The advice of Bruder Klaus: "*Eidgenossen, mischet euch nicht in fremde Händel*"—a Swiss analogue to the counsel given by Washington in his Farewell Address—was resurrected from the fifteenth century and made to do valiant service in advertisements and placards. Although the council of the League of Nations on February 13 of this

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year formally guaranteed the military neutrality and inviolability of Switzerland, the enemies of the league protested as unneutral the obligation to take economic measures against possible recalcitrant states, holding this moreover to be a despicable kind of "hunger warfare," certain to lead to military reprisals by the aggrieved state and probably to the invasion of Switzerland and the seizure of Geneva as the capital of the league. The military futility of such action deprived the latter argument of any real force. Regarding neutrality the appeal of the federal council, referred to above, held that: "Entry into the League of Nations in no way diminishes our independence, on the contrary it strengthens it. It involves no denial of our traditional neutral policy of peace; rather will it permit us to pursue that policy in broader ways."

Although not entering largely into public discussion, there was an underlying fear that rejection of the league might cause grave disaffection, perhaps even a secessionist movement, in Romance Switzerland. Opponents of the league made the utmost of the failure of the United States to ratify, but this was discounted as due almost entirely to partisan and anti-Wilson rancor prior to a presidential election. Very little was said openly about German influence, but it seems to have been generally accepted that the Junker and bolshevist elements of Germany desired the Swiss to reject the league, while all the elements supporting the present government of that country favored its acceptance. Certain it is that Dr. Müller, German ambassador to Switzerland, openly expressed the wish to Federal President Motta that "the hopes and efforts of the federal council in favor of the entry of Switzerland into the League of Nations might be realized."

One of the curiosities of the campaign was an argument widely disseminated in certain clerical circles to the effect that Clemenceau, Lloyd George and President Wilson were all notorious free masons, and the league itself a free masonic conspiracy against God, religion and the Pope.

The referendum resulted in a popular vote of 415,819 for to 323,225 against the league. It is estimated that about 76 per cent of the electorate voted, which is a very high, although not the highest, percentage of participation on record. The vote by cantons was not so decisive as the substantial popular majority of 92,594. Eleven and a half cantons were carried for the league, ten and a half against it. A change of ninety-four popular votes in Appenzell Exterior would have tied the state vote and defeated the league. Of the larger cantons Bern, Vaud

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and Luzern were for the league; Zürich, St. Gallen and Aargau against it. In Romance Switzerland the popular vote was overwhelmingly in favor of the league, being estimated at 171,000 for to 31,000 against. In German speaking Switzerland the vote stood about 244,000 for to 292,000 against the league.

Deep as were the divisions among the Swiss people on this issue the morrow of the referendum showed them ready to accept the popular verdict without question. Only the future can decide whether their decision was for the weal or the woe of their country. Meanwhile, however, Switzerland enters the league in good faith, people and government alike loyally determined to do all in their power to make it a success. An American may be pardoned the regret that an equally clear-cut popular decision, free from all extraneous considerations, is not possible in his own country.[1]

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[1] The writer desires to express his cordial thanks to Mr. S. Meier, editor of the *Amerikanische-Schweizer Zeitung* for a very complete file of Swiss exchanges on this subject.

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NOTES ON INTERNATIONAL AFFAIRS

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The Outlook for International Law. Now that a year has elapsed since the signing of the Treaty of Versailles it is possible to survey the more immediate effect of its provisions upon the rules of international law in force in 1914, as well as to examine the general effect which the war itself has had in preparing the way for the establishment of new legal relations between the nations. From the outset it is clear that the high hopes which idealists entertained that the close of the war would be followed by a new era of international relations have not been fulfilled. The vision of a "governed world," of a federated republic of the nations, of an international commonwealth, is still a dream of the future, not a picture of things fulfilled. For the moment the old order continues in all of its essential respects. The individual interpretation by each nation of its rights and duties and the individual arming by each nation for self-protection have not yet been definitely renounced by the foreign offices of the states. Trade rivalries which had been subdued in part by the conditions of the war have sprung up again with renewed sharpness and animosity. The territorial lines marked out by the treaty have given rise to disputes outnumbering many times the dissensions of the decade preceding the war. Yet as against these signs of an unreconstructed world of nations there are on the other hand signs of progress towards the development of a more logical and more effective system of international law. If little advance has been made towards the desired goal, at least the goal itself has been erected, and the mind of the nations has been prepared for more rapid progress towards it in the near future.

A New Basis of International Relations. In the first place the legal foundations upon which an effective system of international law may be based have been defined with greater clearness than ever before. It is not too much to say that a new conception of international law has been brought about in the realization that the nations as a body must assume the obligation of maintaining the peace of the world.

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Before the war there was an open recognition of the attitude of neutrality on the part of third powers in the event of a war between two or more members of the international community. Public opinion had by tradition the right to express itself in cases of manifestly unjustified aggression; but it never undertook to condemn war itself as a means of supporting the just claims of one nation against another. War was a legal remedy, to be resorted to at the discretion of the injured party; and provided the war was conducted in accordance with the established usages its results, as recorded in the treaty of peace, were not vitiated by the fact that force had been used to obtain them. This traditional recognition of the legality of war and of the right of neutrality on the part of parties not directly concerned has now been replaced by a definite conception of the collective responsibility of the nations at large to see that justice prevails in the relations of state to state. The Covenant of the League of Nations gives clear expression to this fundamental principle of law. Article XI states in explicit terms that "any war or threat of war, whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league, and the league shall take any action that may be deemed wise and effectual to safeguard the peace of nations." This is a clear intimation of the adoption of the principle of collective responsibility, and it is further strengthened by the agreement set forth in Article XVI that if any of the contracting parties should break the several covenants to arbitrate it shall thereby "ipso facto be deemed to have committed an act of war against all the other members of the league." Measured against the feeble *voeux* expressed by the Hague Conferences of 1899 and 1907 this declaration of the covenant of the league is seen to be of fundamental importance. It becomes, as it were, the corner-stone of a new system of international law. The absence of the United States from the membership of the league lessens, indeed, the authority of the new principle; but even in the case of the United States this particular article of the league may, by inference from the vote upon the treaty, be said to have been accepted by a large majority of the senate.

The acceptance of the principle of collective responsibility in what is as yet a qualified form has been supplemented by the further recognition that if international law is to have the force and effect of law it must have behind it a more definite sanction than that which has hitherto been its support. The old problem of the text books, as to whether international law, lacking a physical sanction, was true law,

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may still be debated as a point of academic interest, but it is clear that unless a definite physical sanction can be supplied the range of international law cannot be extended beyond its narrow confines of 1914. It is a small matter whether we concede or deny that international law was true law within the limited scope assigned to it before the war. What is of importance is that international law cannot be extended to cover the vital interests of the nations, which are involved in the disputes that lead to war, unless the public opinion of the nations be so organized as to be able to compel acquiescence in its decisions. Public opinion may be an effective sanction in cases where nothing further is involved than the settlement of fishing rights or of a boundary line, but it cannot be relied upon where urgent national interests are at stake. The Covenant of the League of Nations recognizes the need of such a sanction and provides in Article XVI that a breach of the covenants to arbitrate shall, as we have seen, be regarded as an act of war against all the other members of the league and shall thereupon be followed by a "severance of all trade or financial relations" between the members of the league and the offending state. Should this economic boycott prove ineffectual, the council of the league is authorized in such case "to recommend to the several governments concerned what effective military or naval force the members of the league shall severally contribute to the armed forces to be used to protect the covenants of the league." The agreement to use force is, therefore, a conditional one, being adopted as a substitute for the proposal of an international army and navy; but even in its qualified form it marks the recognition that public opinion of itself is an inadequate sanction of the law.

It need scarcely be said that the acceptance of the principle of collective responsibility and the adoption of a physical sanction of international law both encroach upon the traditional principle of the sovereignty of the individual state, and there are signs, especially in the United States, that the old theory is dying hard. Of all the outworn conceptions of international law sovereignty is the most illogical. In the restricted sense of national autonomy in matters of internal self-government it has, of course, a very real meaning, and one which has been qualified in no way by the agreements contained in the covenant of the league. But in its wider sense of the right of each state to be the arbiter of its own claims and obligations, and to determine for itself the extent of its armaments for self-protection, "sovereignty" was and is a standing contradiction to the most elementary concep-

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tions of law. A world of literally sovereign nations is a world of anarchy. Even before 1914 the reality of sovereignty had long since been abandoned in the presence of the intimate commercial and social relations of the nations. Henceforth the term must be used with caution, emphasis being laid upon the distinction between domestic self-government and the right of arbitrary judgment.

The Persons of International Law. Some little progress may be recorded in the development of more definite rules regarding the persons of international law. The old distinctions between sovereign and semi-sovereign states, between those who were members of the family of nations and those who were not, have now been practically abandoned, but no satisfactory substitute has yet been found to take their place. The so-called great powers have for the time being been reduced in number from eight to five, while the rival alliances which divided the great powers of 1914 have disappeared. But on the other hand a sort of qualified legal standing in international law has been given to the five great powers by constituting them a majority group of the Council of the League of Nations. Provision is made in the covenant of the league that in addition to this permanent group four other states shall be represented upon the council, the designation of these latter to be made by the assembly; and provision is further made for subsequent increases of membership. Thus far the selection of these additional members has not been made, and in consequence the organization of the league has been criticized as being an attempt on the part of the great powers to perpetuate their exclusive position within the international community.

Membership in the League of Nations will doubtless become in the future the test of international personality, and will replace the ill-defined status of membership in the "family of nations." It will be observed that the league already contains several members not included in the family of nations of 1914. The four British self-governing dominions, together with India, have been admitted to membership, and a new rule of international law is thus introduced which permits a state to possess international personality while remaining formally a dependent member of a larger empire. The situation is without precedent in international law. Before 1914 Canada could only have obtained recognition of its separate international personality by successful revolt against the mother country, and no proof of its *de facto* autonomy would have entitled it to a place in the councils of the nations, although it may be noted that Canada had already secured for itself a

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qualified position in international affairs by reason of the separate commercial treaties made between Canada and other states. The right conferred upon the British dominions and India of voting in the assembly of the league has, however, raised the issue whether the British Empire is not thereby overrepresented in the assembly, and in consequence one of the reservations adopted by a majority of the United States senate proposed that these five votes be not counted when disputes involving Great Britain were before the assembly.

Several new states appear on the list of members of the league. Czechoslovakia, Poland and Hedjaz obtained membership as signatories of the Treaty of Versailles. Jugoslavia, the "Serbo-Croat-Slovene State," signed the treaty, but to March 20 had failed to ratify it. It is of interest to note that the three European states were admitted to membership of the league subject to certain definite conditions contained in the treaties of peace with Germany and Austria. In the treaty with Austria, Czechoslovakia and Jugoslavia agreed to embody in a special treaty with the principal allied and associated powers such provisions as might be deemed necessary to protect racial, linguistic, or religious minorities, and to assure freedom of transit and equitable treatment for the commerce of other nations. Similar provisions with respect to the protection of racial and religious minorities in Poland were included in the Treaty of Versailles. The importance of these provisions is not only that they are definite restrictions upon the sovereignty of the states in question, which do not, however, affect their international personality, but that they constitute precedents for the assumption by the League of Nations of a right to regulate domestic conditions within new states when such conditions might be likely to give rise to disputes with neighboring states.

The "right of self-determination" may now be said to have obtained a foothold among the principles of international law. International law of 1914 recognized a new state only when, after revolting against the larger state of which it formed a part, it succeeded in maintaining its *de facto* independence. The treaties of peace with Germany, Austria, Hungary and Turkey create new states by the fiat of the league; but since the creative decree has only been pronounced in favor of the subject nationalities of the defeated powers, it cannot be said that there has been any very definite recognition of self-determination as a fundamental principle of international law. Political and economic conditions still qualify the application of the principle in a given case, and there has been no relinquishment by the powers

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of their right to treat as a domestic issue the question of self-determination when arising within their borders. Moreover, it is still unsettled what is to be the proper basis or unit of self-determination. The "well-defined national aspirations" which President Wilson believed should be accorded satisfaction are in most cases associated with ill-defined geographical limits where the point of contact begins with other nationalities. The decisions of the several treaties of peace appear likely in a number of cases to give rise to disputes for many years to come. In the interest of maintaining the historical boundaries of Bohemia a large body of Germans was included within the western boundary of Czechoslovakia. Italy was given a strategic boundary in the Tyrol which embraces a dominant Austrian population. Seaports along the Adriatic have been cut off from the hinterland. Poland has been given a boundary which drives a wedge between East and West Prussia. The plebiscite taken by zones in Schleswig-Holstein represents, perhaps, the most equitable adjustment of the difficulty of mixed populations. It is evident that there can be no offhand or general solution of the problem of nationalities on the basis of boundary lines, and that only in the protection by constitutional provision of the rights of minorities can many of the special situations be satisfactorily met.

The provisions contained in the covenant of the league and in the treaties with Germany and with Turkey with respect to the creation of international mandates for the government of backward territories are a marked departure from the precedents of international law. If they may be judged by the principles they enunciate rather than by their present promise of practical results they may be regarded as a reform of the highest importance. Article XXII of the covenant recognizes the existence within the Turkish Empire of certain communities which have reached a stage of development at which they are ready for separate statehood subject to a temporary régime of administrative assistance from a mandatary state. Mandates for Syria and Mesopotamia have been accepted by France and Great Britain, while the senate has refused to give its consent to the President's plea that the mandate for Armenia be accepted by the United States. Unfortunately the abstract issue of administrative assistance to be rendered by the mandatary is complicated by the fact that some of the territories in question have valuable natural resources, so that the possession of a mandate appears to be regarded as the equivalent of a "sphere of influence" within which the mandatary would have special facilities for commercial exploitation.

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In addition to these territories which are to be emancipated under the protection of stronger states, there are the former colonies of Germany, some of which are to be administered by a mandatary under a separate form of government and others to be administered as integral portions of the territory of the mandatary. In both cases provision is made in the covenant and in the body of the treaty that the administration shall be conducted under conditions approved by the league, by which equal opportunity for trade will be allowed to all members of the league, and certain abuses, such as the trade in slaves, arms, and liquor, will be prohibited; and the requirement is laid down that the mandatary shall render to the council of the league an annual report in reference to the territory committed to its charge. The value of these provisions, if it is not too much to assume their observance, lies not only in the fact that they attempt to protect the backward peoples of Africa against possible exploitation, but that they introduce a new principle of international responsibility into the relations of nations, in that they recognize that the development of such peoples forms "a sacred trust of civilization." If the league can secure the fulfillment of the promises thus made, a strong impetus will be given to the further development of international administrative law. At the present moment the functions of the permanent mandates commission, which is to receive the reports of the several mandataries, have been outlined and the personnel of the commission is about to be appointed.

A word may be said with respect to the future status of neutralized states. International law of 1914 recognized the status of permanent neutralization imposed upon a small state by a formal guaranty of the great powers. The guaranty operated as a contractual restriction upon the great powers to prevent them in time of war from taking advantage of the strategic position of the small state, and at the same time it placed the small state in the position of being unable to take sides in a conflict between neighboring states. On the other hand the general rules of international law forbade the violation of the territory of all states not parties to a war in progress, so that these latter were likewise immune from attack should they choose to remain neutral. The distinction between the formal contractual guaranty and the protection of the ordinary rules of international law is illustrated in the attitude of Great Britain and of the United States towards the violation of the neutrality of Belgium. Great Britain had no choice but to uphold the treaty of 1839; whereas the United States, although a signatory of the Hague Convention which declared the territory of

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neutral states to be inviolable, did not acknowledge any obligation to enforce a mere rule of international law, however applicable to the facts of the case. The distinction only shows the weakness of the sanction of international law in 1914 and the unorganized character of the international community. The covenant of the league puts an end to all special guaranties, and lays down the principle that all states are to be equally protected in their territorial integrity and political independence, and that any nation which undertakes to make war without first resorting to arbitration will be regarded as making war upon the league itself. All states henceforth become neutralized, and the old distinctions between "several" and "collective" guaranties and between neutralized and merely neutral states cease to have a meaning. It is of interest to note that at the opening of the Belgian parliament following the signing of the armistice, King Albert formally repudiated the treaty of 1839 as an infringement upon the independence and full sovereignty of the country.

Need of Positive Legislation. Little progress is to be recorded in respect to the most urgent need of international law, namely, the development of a clearer and more comprehensive code of international rights and duties. Several special legislative functions have, however, been conferred upon the council of the league, among them being the determination of plans for the reduction of national armaments and of plans for offsetting the evils of the manufacture, by private enterprise, of munitions and implements of war. Thus far no steps have been taken in the matter of plans for disarmament further than the appointment of a permanent commission which is to draw up recommendations for the council. Unfortunately no general legislative powers have been conferred upon the assembly of the league, but there is no reason why it should not assume such powers subject to the ratification of its conventions by each individual state, as in the case of the agreements reached at the Hague. A number of constructive provisions in regard to international transportation are included in the Treaty of Versailles, but they have been limited in their application to the grant of easements in favor of the allied and associated governments on German railways and waterways and in German ports, instead of being extended to the commercial intercourse of all members of the league. The treaty does, however, make provision for an ultimate grant of reciprocity after five years, unless the league decides to prolong the time. A permanent commission has been created to carry out the special provisions of the treaty; and there is discussion of a world conference

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to be called which would work out a plan for a more general enjoyment of international waterways and for the prevention of discriminations in their use in favor of the riparian states. It is clear that the whole subject of economic rights of way, including the use of railways and waterways, freight rates, freight facilities, through traffic, the use of ports, and port dues must sooner or later be regulated by general international agreement if one of the chief sources of international jealousy and bitterness is to be removed.

The most important problem, however, awaiting settlement is the regulation of international commerce in its larger aspects. No one disputes that the trade rivalries of the nations were prominent among the underlying causes of the war, yet there appears to be little intention on the part of governments to formulate a constructive rule of law to meet the situation. Competition for exclusive control over the raw materials of industry continues today as in 1914, the possession of adequate supplies of oil being now the foremost concern of foreign offices. The problem of the terms upon which concessions may be held in foreign countries, and of the rights acquired by a state to protect its citizens in the enjoyment of such concessions still remains unsettled. The principle of the "open door" remains of limited application, although it would appear that it is implicitly included in the provisions of the covenant of the league with regard to the administration of colonial mandates. Preferential tariffs continue to exist between colonies and the mother country. A new basis of discrimination by the United States appears in the recent Jones Merchant Marine Act by which the President is directed to abrogate all treaties with foreign countries which prevent the United States from imposing discriminatory duties or tonnage taxes. Thereafter the interstate commerce commission is to allow preferential import and export rates only when the goods involved are carried on American ships, if available. There is obvious need for an "international commerce act," modeled after, if not so comprehensive as, the Interstate Commerce Act of 1887, which shall undertake to formulate some such regulation of the trade of the nations as will convert the present competition upon unfair terms into a true equality of economic opportunity.

The execution of international law by means of administrative commissions has received a remarkable development as a result of the Treaty of Versailles. Apart from the commissions possessing more general functions, such as the labor, health, disarmament, freedom of transit, mandates, and others, a number of commissions have been

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created for the performance of specific administrative duties. The creation by the treaty of Danzig as a free city under the protection of the league called for the appointment of a high commissioner who should administer the city as the agent of the league. The commissioner has been appointed and has drawn up plans for a constituent assembly to be elected by the people, which is to draw up a permanent constitution. Similarly, a governing commission for the Saar valley has been appointed by the council of the league and has already entered upon its functions by the issuance on February 26 of a proclamation notifying the people of their government by the league. A remarkable innovation in international practice is to be found in the establishment of the interallied Rhineland commission which is to be the supreme representative of the allied and associated powers during the military occupation of the Rhine territory. The members of the commission enjoy diplomatic privileges and immunities, and are empowered to issue ordinances having the force of law, whether affecting the army of occupation or the civilian population, in so far as may be necessary to secure the safety of the occupying forces.

More thoroughgoing still in their encroachment upon the sovereignty of Germany are the powers of the reparation commission, which is intrusted with the administration of the reparation provisions of the treaty. The commission, in determining the total reparation bill which Germany is to be required to pay, may require full information with regard to Germany's military operations, her financial situation, and her stocks, current production and productive capacity of raw materials and manufactured articles. This experiment in the administration of a bankrupt state, while undertaken for the specific purpose of securing payment of a debt, cannot but have important indirect results in creating a precedent for the administration of backward countries, such as Morocco, in cases where the object in view is not the punishment of international crime, but the rehabilitation of the state and the prevention both of its exploitation by its creditors and of possible conflicts among the creditors themselves. In the presence of the present threat to Mexico, contained in the report of the subcommittee of the senate committee on foreign affairs, which offers to Mexico the alternative of a new treaty involving the alteration of its constitution and other specific promises, or the policing of its lines of communication by American forces, it may be questioned whether it would not be at once more logical and more conducive to international peace if the League of Nations or the Pan American Union were called

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upon to undertake the task of reconstructing the country by the appointment of an international receiver-general.

A further illustration of the possibilities of international administration of undeveloped countries is to be seen in the organization of Great Britain, France, Japan and the United States into a consortium or syndicate of governments for the control of private financial enterprises in China. In accordance with the plan proposed the four signatories of the consortium are to pool all their undeveloped concessions and options. Henceforth no advances of money are to be made to individuals or to private enterprises, but only upon the application of the Chinese central or provincial governments, or corporations guaranteed by them. When loans are made there is to be an equality of opportunity in taking up the respective shares. The agreement, if adhered to, should do much to adjust the rivalries of the past, and to convert what have been exclusive spheres of interest into a free field for the four chief competitors.

International Judicial Organization. With respect to the development of international judicial institutions progress has been made to the extent of the appointment, at the meeting of the council of the league on February 11, of an organizing committee which is to draw up plans to be presented to the council for the creation of the permanent court of international justice provided for in Article XIV of the covenant of the league. The committee consists of twelve members, who began their sessions on June 16 at the Peace Palace at the Hague. Although the United States, by reason of its failure to ratify the treaty, is not a member of the league, Mr. Root accepted an appointment as a member of the committee. In making the opening address M. Léon Bourgeois pointed out the difference between arbitration by occasional courts and "judicial settlement" by a permanent court, and explained that the latter was only possible in an organized world. The draft convention of the judicial arbitration court (court of arbitral justice) proposed at the Second Hague Conference, but never brought into operation by the signatory powers, will doubtless form the basis of the discussions of the committee.

With respect to the jurisdiction of the new court it has already been announced by Mr. Root that political questions, as distinct from juridical, will be excluded from the court. Compulsory arbitration of all disputes whatsoever still appears as little feasible as it was in 1914, except on the one point that the covenant of the league requires that its members may not go to war when the council or the assembly shall

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have decided unanimously against them. Judging from the dominant position of the great powers in the council of the league it would seem likely that the question of the composition of the permanent court, upon which it was impossible to secure an agreement at the Hague in 1907, will be settled along lines of the composition of the council, representation being given to the five great powers and to four or more other states designated by the assembly of the league.

Apart from the failure of the United States to become a member of the league by ratification of the Treaty of Versailles, the prestige of the league has suffered greatly from its inability to take action in a number of cases which appeared to fall within its jurisdiction. The most serious of these is doubtless the war which Poland has been conducting against Russia. It would appear that on the technical ground that the war is a continuation of the World War and is not a new war the league has decided that it cannot take action in the matter. A more direct case for intervention has, however, been presented to the league in the form of an appeal to the league from Persia for protection against Russia. The appeal has been described as the "first test case" of the value of the league. On June 16 a decision was reached by the council in which action in favor of Persia was postponed until Persia should receive from Russia a reply to a communication of June 12, outlining the concessions Persia wanted Russia to make. Should a satisfactory reply not be received by Persia, the council was ready to receive a second application for intervention. The difficulty in the case is not only that Russia is not a member of the league, but that its present *de facto* government has been outlawed by the powers, so that it has little to lose from its failure to comply with a decision of the league.

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NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

The program for the meeting of the American Political Science Association to be held at Washington, December 28–30, is in process of construction. Sessions are planned on the following subjects: administrative reorganization in the national government; the relation between the executive and legislative branches in the United States; political science materials in the Washington archives and in official publications; problems and policies of international organization; Pan American politics and diplomacy; and political theory. A session on the peace treaties is probable. Round-table conferences are proposed on European politics, constitutional law and municipal finance. There will be the usual joint session for presidential addresses; also the annual business meeting of the association. Professor C. C. Hyde, of Northwestern University, has replaced Dr. Hornbeck on the program committee. The chairman is Professor A. N. Holcombe, of Harvard University.

Professor Henry Jones Ford, of Princeton University, president of the American Political Science Association in 1917–19, has been named by President Wilson as a member of the interstate commerce commission.

Dr. L. S. Rowe of the University of Pennsylvania, who during the war served as assistant secretary of the treasury, has been appointed director-general of the Pan American Union. Dr. Rowe will assume the duties of his new office in September.

Professor Lindsay Rogers, of the University of Virginia, gave two graduate courses on politics at Columbia University during the summer session. He has been granted leave of absence for next year to accept

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an appointment as lecturer on government at Harvard University. His courses at Virginia will be in charge of Dr. Bruce Williams, of Johns Hopkins University, as acting adjunct professor of politics. Messrs. Philip M. Payne and E. L. Dyer have been appointed instructors in political science at the University of Virginia.

Dr. Chester Lloyd Jones, formerly secretary-treasurer of the American Political Science Association, has resigned his professorship at the University of Wisconsin. He is at present commercial attaché at the American embassy at Madrid, but has accepted a position with a commercial house having headquarters in New York City.

Professor James W. Garner, of the University of Illinois, gave a course on political theory and another on comparative European government at Stanford University during the recent summer session. After the summer quarter at Stanford he will sail for Europe, to remain throughout the coming academic year.

Dr. Charles H. Cunningham, adjunct professor of business administration and government at the University of Texas, has been granted leave of absence to accept an appointment as commercial attaché for the United States in Mexico.

Mr. Frank M. Stewart, secretary of the bureau of government research at the University of Texas, has been granted leave of absence for next year to continue his studies in Columbia University and in the New York Bureau of Municipal Research.

Professor H. G. James, of the University of Texas, gave courses in political science at the University of Chicago during the summer quarter.

The faculty of the school of government at the University of Texas will be enlarged next year and courses will be added in the field of Latin American government, especially along the lines of constitutions, administrative methods, and political problems. Dr. James will take charge of this work and will offer the courses devoted to this field.

Harrison C. Dale, professor of political science at the University of Wyoming, has been granted partial leave of absence for the first term

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of the academic year, 1920–21, to assist Governor Carey in the installation of the Wyoming state budget system. Last summer Professor Dale made an administrative survey of the state institutions required under the budget law.

Mr. C. A. Dykstra, formerly secretary of the Civic League of Cleveland, has entered upon his duties as civic secretary of the Chicago City Club.

Dr. Stanley K. Hornbeck, until recently with the United States tariff commission, has gone to the Far East with a view to making a first-hand study of political and economic conditions.

Mr. R. Granville Campbell, who recently received the doctor's degree at Johns Hopkins University, has been appointed professor of political science at Washington and Lee University.

Dr. Pitman B. Potter, associate in political science at the University of Illinois, has been appointed to an assistant professorship of political science at the University of Wisconsin. Professor Potter received his doctor's degree at Harvard University in 1918.

Mr. Harold R. Bruce, who completed his work for the doctor's degree at the University of Wisconsin this summer, has been appointed to an assistant professorship of political science at Dartmouth College. Dr. Bruce's doctoral dissertation was a comparison of the aims and methods of organized labor in politics in Great Britain and the United States.

Mr. Clarence A. Berdahl, who received the doctor's degree at the University of Illinois in June, has been appointed to an instructorship in that institution. His dissertation dealt with the war powers of the president of the United States. Dr. Berdahl taught at the University of Texas during the second term of the summer session.

Associate Professor John P. Senning, who has been acting chairman of the department of political science and sociology for the past year at the University of Nebraska, has been made chairman. Professors L. E. Aylsworth, H. P. Williams, and J. P. Senning delivered lectures before the citizenship school for women conducted by the extension department of the University of Nebraska in May.

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Mr. George B. Noble, who received the doctor's degree at Columbia University in June, has been appointed to an assistant professorship of political science at the University of Nebraska.

Professor Karl F. Geiser, of Oberlin College, gave courses at the Ohio State University during the recent summer session, replacing Professor F. W. Coker, who on account of illness temporarily discontinued teaching. Professor Geiser's work at Oberlin was taken over by Dr. Kenneth W. Colegrove, of Northwestern University.

Miss L. M. Holmes, who for the past two years has held the N. W. Harris fellowship in political science at Northwestern University, has been awarded a thousand dollar teaching fellowship in international law offered by the Carnegie Endowment for International Peace. Miss Holmes will spend the coming year in study at Harvard and Radcliffe.

Mr. Paul M. Cuncannon, of the Princeton graduate school, has been appointed instructor in political science at the University of Wisconsin.

Mr. Thomas F. Carroll, of the Princeton graduate school, has been appointed instructor in political science at Dartmouth College.

Professor Victor J. West will be on leave of absence from Stanford University during the year 1920–21, and is to be associated with the United States Bureau of Efficiency at Washington.

Miss Louise Overacker, research assistant in political science at Stanford University, has been appointed instructor in political science at Vassar College.

Stanford University is introducing a course in problems of citizenship, to be required of all freshmen. The course runs through the year and is to be divided into three parts, dealing respectively with social, political, and economic problems. The authorities of the university consider the new course so important that they are inviting the best men of the faculty in the respective lines to assist in the work.

Professor E. W. Crecraft, of the Municipal University of Akron, is coöperating with the Akron Bureau of Municipal Research. Students in the university are allowed credit for field work, and the arrangement is said to be tantamount to a training school for public service

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Thomas I. Parkinson, professor of legislation in the Columbia University Law School, will resume his academic duties in the fall. Professor Parkinson has resigned the position of senate draftsman to which he was appointed by the Vice-President in March, 1919, upon the creation of the drafting service for the senate and house of representatives. This service was created by Sec. 1303 of the Revenue Act of 1918. During the last session the house appropriation committee reported a bill proposing to repeal the law creating the drafting service, but by a vote of 126 to 11 the house reversed the committee and appropriated the sum of $40,000 for the use of the service in both houses during the next fiscal year.

The annual conference at Clark University on international affairs was held May 20–22 and was devoted to problems related to Mexico and the Caribbean. The following were among the papers read: "How to Restore Peace in Mexico," by Henry Lane Wilson; "Are the Mexican People Capable of Governing Themselves?" by T. E. Obregon, Mexican minister of finance in 1913; "Common Sense in Foreign Policy," by E. N. Borchard; "Mexican Character in Relation to Environment," by Ellsworth Huntington; "The Mexican People," by Frederick Starr; "The United States and the Nations of the Caribbean," by Jacinto Lopez; "The Caribbean Policy of the United States," by William R. Shepherd; "Educational Coöperation between Latin America and the United States," by John Barrett and Francisco J. Yanes. According to custom, the complete proceedings will be printed.

At the April meeting of the Southwestern Political Science Association the following officers were elected for 1920–21: president, A. P. Wooldridge, of Austin, Texas; first vice-president, George B. Dealey, general manager of the Dallas *News*, Dallas, Texas; second vice-president, Professor F. F. Blachly, of the University of Oklahoma; third vice-president, Professor D. Y. Thomas, of the University of Arkansas; additional members of the executive committee, Professors E. R. Cockrell, of Texas Christian University, and E. T. Miller, of the University of Texas. Mr. C. P. Patterson, of the University of Texas, was reëlected secretary-treasurer, and Professor C. G. Haines, of the University of Texas, was made editor of the *Southwestern Political Science Quarterly*. The first number of the *Quarterly* was issued last June. Besides two general articles on the "Meaning and Scope of Political Science" and "Municipal Home Rule in Oklahoma," it

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contains an announcement of the purposes of the publication, an account of the first meeting of the Southwestern Political Science Association, the constitution of the association, a department of legislative notes and reviews, a department of news and notes, a number of book reviews, and an English version of the constitution of the republic of Uruguay adopted by popular vote in 1917. A special feature is to be a department devoted to Latin-American affairs, under the editorship of H. G. James.

In the Harris Political Science Prize essay contest, open to undergraduates in the colleges and universities of Illinois, Wisconsin, Minnesota, Iowa and Indiana, the prizes for 1919–20 were awarded as follows: first prize, to Mr. Herbert Lefkovitz, of the University of Minnesota, for his essay entitled "Influence of the World War on Cabinet Government in Great Britain;" second prize, to Mr. Darrell F. Johnson, of the University of Minnesota, for his essay entitled "The National Non-Partisan League in North Dakota."

The subjects for the competition of 1920–21 are as follows:

(1) Constitution-making in Europe, either from a comparative standpoint, or for a particular state;

(2) The elements of a Far Eastern policy for the United States;

(3) International settlements in the Near East, with relation primarily either to European territories or to Asiatic territories;

(4) Campaign contributions and expenditures, and their regulation;

(5) The problem of state supervision and control over local administration (a) in a particular state, or (b) with reference to a particular field of government, such as health, public utilities, taxation, accounts, law enforcement, etc.;

(6) Budget reform (a) in the national government or (b) in a particular state or city;

(7) Reorganization of county government, with reference to a particular state or county.

Detailed information concerning the contest may be obtained from Professor P. Orman Ray, 106 Harris Hall, Evanston, Illinois.

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THE INTERNATIONAL UNION OF ACADEMIES AND THE AMERICAN COUNCIL OF LEARNED SOCIETIES DEVOTED TO HUMANISTIC STUDIES[1]

One of the best traditions which have come down to us from the Middle Ages is that of the republic of letters, of the interdependence of learned men and students of all nations, of the free share in the results of research and thought across political boundaries. Whatever be the fate of the effort to establish closer relations among governments, the old bonds among scholars will not be loosened; already there has been a definite response to the need for organized effort in the field of humanistic learning.

Before the war the International Association of Academies, of which the United States was not a member, formed in 1900, met the need for organized coöperation among scholars; but its activities came to an end with the breaking out of the conflict which involved so many of its members. Out of the war has come a new international scientific organization, the International Research Council, formed in 1918, at the call of the Academy of Sciences in Paris. The research councils created in each belligerent state to mobilize scientific thought for war purposes were thus united for mutual help, and after the armistice, the international council, no longer an engine of war, was opened to the scientific academies of the neutral countries. It now holds regular meetings, where the scientists of member countries meet for common study of the questions which interest them all.

The initiative for the formation of a similar organ among those interested in humanistic studies came also from Paris. The Academy of Inscriptions and Belles-Lettres and the Academy of Moral and Political Science called a conference at Paris in May, 1919, at which was formed the Union Academique Internationale (International Union of Academies). Its organization was completed and a constitution adopted at a second meeting of authorized delegates, held also in Paris, in October, 1919, at which eleven countries were represented. The second regular meeting was held in May, 1920. So the new organization is now well established as a focal point for humanistic scholars of the world. The objects of the union were expressed in the first call as follows:

(1) "To establish, maintain, and strengthen among the scholars of the allied and associated states corporate and individual relations which

[1] The constitution of the American Council of Learned Societies was ratified by the American Political Science Association in March, 1920.

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shall be sustained, cordial, and efficacious, and which shall, by means of regular correspondence and exchange of communications and by the periodical holding of scientific congresses, make for the advancement of knowledge in the various fields of learning.

(2) "To inaugurate, encourage, or direct those works of research and publication which shall be deemed most useful to the advancement of science and most to require and deserve collective effort."

The constitution as adopted at the October meeting established as the governing body of the union a committee of two delegates from each country, who should hold at least one meeting a year. The committee elects the officers of the union to manage its affairs in the period between sessions, and to supervise the permanent secretariat established at Brussels, the headquarters of the union. New members may be admitted by a three-fourths vote of the delegates, and it is to be hoped that German and Austrian scholarship will soon be represented on the committee. The administrative expenses of the union are met by an equal assessment on its members, which at present amounts to 2000 francs (Belgian) each; but the funds to carry out projects of work are to be raised by the members.

The function of the union is to give these projects the guaranty of careful consideration by a responsible international group of scholars, who will pass not only on the value of the work, but upon the possibilities of its being carried out. The procedure is planned to allow careful consideration. Projects must be submitted to the member societies or academies before being brought up at a meeting of the committee, so that each local body can decide which are of greater interest from its point of view and which it can aid in carrying out, either by providing personnel to do the work, or by securing the necessary financial support. The delegates bring to their committee meeting the opinions of their local groups as to local wishes and possibilities and can select, as a result of the world-wide referendum they represent, those plans for research or publication which not only will be most valuable in their scholarly results, but will also most readily command financial support or for which qualified workers can be best found.

Eleven academies representing humanistic learning or the humanistic side of general academies have joined the union: France, Great Britain, Belgium, the Netherlands, Norway, Denmark, Italy, Greece, Poland, Russia, and Japan. The academy of Sweden "will be glad to join the union when it is possible to invite all the countries to participate in it;" that is, it will join with the German and Austrian academies.

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The United States was represented at the first meeting by Professor Charles H. Haskins of Harvard and Professor James T. Shotwell of Columbia, and the coöperation of America was not only desired by the Europeans, but was felt to be a duty, as well as a privilege, by the American scholars to whom the call was communicated. A serious difficulty arose in the United States. There was no legally recognized body of scholars representing the humanistic studies, and corresponding to the academies of European countries. A similar situation arose in Great Britain in 1902, when the scientific men were represented in the International Association of Academies through the Royal Society; but there was no means of getting representation for the other branches of learning. Consequently, the British Academy for the Promotion of Historical, Philosophical, and Philological Studies, usually termed the British Academy, was formed to meet the need, and is now a member of the Union Academique Internationale.

In this country, although there is no national academy, there are active societies in each field of humanistic study—societies, many of them, with a long record of useful work and an acquired right to consideration. Appreciating the actual situation, a peculiarly American device was hit upon to set up a body which could represent this country in the union. Instead of endeavoring to establish an academy composed of a comparatively few men, whose choice would have seemed arbitrary to many of those left out, a federation of the existing societies was effected, and the American Council of Learned Societies devoted to Humanistic Studies, termed for short the American Council, was formed in Boston in September, 1919. Great credit is due Mr. Waldo G. Leland, secretary of the American Historical Association, whose ability and enthusiasm are largely responsible for the successful outcome of the September meeting.

The council is composed of two delegates from each constituent society, who meet at least annually. It elects its own officers and appoints and instructs the American representatives in the international union. Its current expense and the annual assessment paid to the union are covered by a small sum assessed on each member society in proportion to membership. The Institute of International Education, through its director, Dr. Duggan, has generously assumed the clerical expense of the council and has provided it with office accommodations.

The first meeting of the council was held on February 14, 1920, in the rooms of the institute in New York. Eleven societies sent dele-

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gates: the American Philosophical Society, the American Academy of Arts and Sciences, the American Antiquarian Society, the American Philological Association, the Archaeological Institute of America, the American Historical Association, the American Economic Association, the American Political Science Association, the American Sociological Society, the American Oriental Society, and the Modern Language Association of America. All these societies are now members of the council. The American Philosophical Association and the Society of International Law were invited to join; the first has postponed discussion until its next meeting, the second decided not to join.

The American Political Science Association was represented by Professor Henry Jones Ford, of Princeton, and Mr. J. P. Chamberlain, of Columbia University. The council elected as its first officers, Professor Charles H. Haskins, of Harvard, chairman; Professor John C. Rolfe, of the University of Pennsylvania, vice-chairman; Professor George M. Whicher, of Hunter College, secretary. These three, and Professor Allen A. Young, of Cornell, and Professor Hiram Bingham, of Yale, constitute the executive committee. Professor James T. Shotwell, of Columbia University, and Mr. William H. Buckler, of Baltimore, were appointed delegates to the May meeting of the international union.

American membership in this union is thus based on recognition of the existing American societies, which include practically all students of subjects coming under the jurisdiction of the international body. The members of the council are not a self-continuing body of scholars more or less arbitrarily selected, but are chosen by the suffrage of their peers in the fields which they represent. This democratic organization has the double advantage of corresponding to our American theory of representation and of resting the support for the international movement on the wide basis of the ten thousand members of the constituent societies, rather than on the forty or one hundred immortals who would constitute an academy.

The moral and social value of the expression of the international solidarity of learning contained in the union needs no argument. The League of Nations is now in being and it is fitting that the international democracy of learning should have an organ through which it can express its desires to the council of the league and can aid that body in settling questions which interest the scholars of the world. Already an international committee of archaeologists has framed regulations in respect to excavations in the territory of the former Turkish Empire,

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regulations which will probably be attached to the treaty with Turkey and will be applied by the mandatories who will hold portions of that territory. Under the Ottoman régime, permits to excavate in that archaeological golconda were obtained through national or personal influence, a condition which seriously hampered effective work and caused much resentment. The existence of an active international organ of scholars will be a safeguard against breaches of the regulations, once they are adopted.

Such work, however, is only a small part of the field. Students of political science will be especially interested in the possibilities of joint action in urging governments to a more liberal policy in opening their archives to study; in standardizing reports, especially in respect to labor laws, where the international right of inquiry as to the enforcement of international labor treaties will tend to this end; in securing coöperation in studies of government activities such as budget systems, parliamentary committee systems, in regard to which general information is so abundant, exact knowledge so rare and so hard to acquire, without the coöperation of local students and administrators. When the world was essentially agricultural, problems of political science might have been considered largely local. Now that the world is becoming industrialized, and on a machine basis, even as to farming, problems are increasingly international in scope, as the international regulation by treaty of labor and migratory birds shows, and in the methods applied by local laws in settling them, witness the world-wide spread of workmen's compensation and other forms of social insurance.

Teachers and students of political science recognize the operation of the law of imitation in legislation; they protest only against blind acceptance of foreign institutions or ostrich-like refusal to accept them on the report of more or less biased observance. The international union offers the means of extending and strengthening the work of such groups as the International Association for Labor Legislation and the International Association against Unemployment, and therefore of rendering a great service, not only to international good feeling and learning, but to practical understanding of governmental and legal institutions as they really exist.

J. P. CHAMBERLAIN.

Columbia University.

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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Law in the Modern State. By LÉON DUGUIT. Introduction by Harold J. Laski. (New York: B. W. Huebsch. 1919. Pp. xliv, 248.)

During the recent years Professor Duguit has figured conspicuously in the realm of theoretical jurisprudence because of the extent to which his views regarding the sovereignty and personality of the state have differed from those commonly accepted. Considerable portions of Professor Duguit's writings have appeared in English translations. In the volume of the Continental Legal History Series entitled *The Progress of Continental Law in the XIX Century* is included a translation of his *Les Transformations Générales du Droit Privé depuis le Code Napoléon;* in the volume of the Modern Legal Philosophy Series entitled *Modern French Legal Philosophy* are to be found selections from his *L'Etat: Le Droit Objectiv et la Loi Positive;* and the November, 1917, issue of the *Harvard Law Review* was devoted exclusively to his study *The Law and the State.* Now, in the volume under review, American readers are presented with a translation by Mr. and Mrs. H. J. Laski of another of Duguit's shorter works.

In all of his works Duguit repeats and stresses the importance of his denial of the state's sovereignty and personality. Of the acuteness of Duguit's analytical powers there can, in general, be no doubt, and it therefore became a matter almost beyond understanding that he should fail to continue to appreciate the real nature of the doctrines which he attacks. By some sort of intellectual idiosyncrasy he seems to have been rendered incapable of distinguishing between the ideas of personality and sovereignty as legal concepts, and, therefore, divorced from questions of actual power, moral right, or political expediency. Failing to make this distinction, or, at least, to keep it clearly and ever present in his mind, he expends his energies in tilting at mere windmills of his own imaginative envisagement. He has a chapter

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in the book under notice, entitled "The Eclipse of Sovereignty" in which he never once really proceeds against the principle, found in all modern systems of constitutional jurisprudence, that the judicial tribunals of a country must accept as law the doctrines automatically declared by the political departments of the government, when acting within the spheres alloted to them by the constitution, and that to the constituent or constitution making organ no absolute legal limits may be set.

It may be added, there appears in the writings of Mr. Laski an almost equal confusion of thought. In his introduction to the volume under review, he does indeed admit that Duguit's doctrine is worthless from the juristic point of view, but, apparently, does not see that, this being so, the doctrine is without any value at all; for he (Mr. Laski) goes on to emphasize the political importance of Duguit's denial of the state's sovereignty. This political importance, however, can only be deemed arguable if it be frankly admitted that Duguit is attacking not the sovereignty of the state as a legal or constitutional proposition, but only the moral justification or political expediency of certain of its acts.

As for the denial of the personality of the state, Duguit is here again controlled by the desire to avoid ascribing inherent or absolute powers and interests to the state,—a result which he seems to think follows from predicating juristic personality of the state. Curiously enough, this denial of the state's personality brings Duguit into company with the school of writers represented by Gierke in Germany, and Maitland and Figgis in England, who assert the "reality" of the personality of corporations, and deny that this personality is a mere figment of the jurist's brain. Figgis was interested in the idea because he thought that thus "reality" could be asserted of the personality of corporations other than the state, and especially because, as thus conceived, the Anglican Church might be given a status that would endow it with original rights and powers, and therefore, within its proper sphere, be placed upon a plane equally as high as that of the state itself. This idea has also been attractive to the so-called political pluralists, among whom Mr. Laski may be included. To these pluralists it seems advantageous either to deny the personality of the state, as is done by Duguit, or, by taking the other extreme, to exalt its personality into the realm of reality but at the same time to assert, that, in this respect, other corporate institutions, whether churches, trade-unions, or functional organizations, have a real personality that should be respected.

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In chapters following the one entitled "The Eclipse of Sovereignty," Duguit discusses public service, statutes, administrative acts, and state responsibility. It is not possible, however, within the limits of this review, to discuss the points attempted to be made, and frankly it is the reviewer's opinion that they are scarcely worth discussing, so barren are the results. Perhaps, however, it is but fair to the author to quote the following paragraph in which he sums up his conclusions:

"In public law we no longer believe that behind those who hold office there is a collective personal and sovereign substance of which they are only agents or organs. In government we see only those who exercise the preponderant force and on whom, in consequence, there is incumbent the duty of fulfilling a certain social function. It is the business of government to organize certain services, to assume their continuity, and control their operation. Public law is thus no longer the body of rules regulating the sovereign state with its subjects; it is rather the body of rules inherently necessary to the organization and management of certain services. Statute is no longer the covenant of the sovereign state; it is the organic rule of a service or body of men. An administrative act is no longer the act of an official who gives commands or of a public servant who fulfills a command; it is always an act made in view of the rule of the public service. The problems such acts involve are always submitted to the judgment of the same courts. If the act violates a statute every affected person can demand its annullment, not as a subjective right but in the name of the legality that has been violated. . . . . Thus public law, like private law, is coming to be interpreted realistically and socially. Realistically, in its denial of a personal substance behind the actual appearance. . . . . It is a social conception, in that public law no longer has as its object the regulation of the conflicts that arise between the subjective right of the individual and the subjective right of a personified State; it simply aims at organizing the achievement of the social function of government."

To those to whom conclusions such as these appear either true or valuable, the book is recommended. The translation appears to be well done.

W. W. WILLOUGHBY.

Johns Hopkins University.

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The Degradation of the Democratic Dogma. By HENRY ADAMS. (New York: The Macmillan Company. 1919. Pp. 311.)

The complacent optimism of the last half century has been derived in no small part from the Darwinian implication that the vital powers of man "have risen from lower to higher by the spontaneous struggle of the organism for life" (p. 153). Upon this hypothesis, it has been easy to erect the dogma of indefinite progress toward betterment.

In his "Letter to American Teachers of History," which was privately circulated in 1910 and which makes up more than a third of the present volume, the late Henry Adams sought to beguile the attention of sociologists and historians from their fetich of evolution to a momentary contemplation of the second law of thermodynamics and some of its implications.

In order that work may be done energy must flow from higher to lower levels, as water does work when falling to sea level. The second law of thermodynamics, announced by Thomson—later Lord Kelvin—in 1852, points out in effect that all of nature's energies are slowly converting themselves into heat and vanishing into space, until at last nothing will be left except the dead ocean of energy at its lowest possible level and incapable of doing any work whatever (p. 145). In short, the universe is running down.

Adams has amplified his argument from the pages of astronomers, geologists, physicists, biologists, even psychologists and historians, until it would be a hardy or unveracious optimism that would not confess a qualm from its perusal. The sun is cooling, or what is more dismaying, maintains its heat only by cataclysmic condensations, and may be getting ready for one of these at this moment. Nor does the line which divides the organic from the inorganic arrest the universal process of the "degradation of energy" by its dissipation. The animal world expends the energy which the vegetable world draws from the sun by restoring it in the form of heat, which is straightway dissipated into cosmic space. True, with man there enters a new force, thought; but can thought reverse the dissipation of solar energy? As a matter of fact, man, though a late comer in a universe already well on the way to bankruptcy, has proved himself a most reckless spendthrift of the hoarded energies of eons. Besides, what is the significance of the appearance of thought regarded simply as a manifestation of vital energy? "All organisms," Mr. Adams answers, "would tend to develop nervous systems when dynamically ill-nour-

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ished," so that "thought appears in nature as an arrested—in other words as a degraded—physical action" (pp. 242–243).

"History," says Mr. Adams, "can be written in one sense just as easily as in another." What vision of the historical process does the degradationist point of view yield? Mr. Adams's answer also hints another of his interests: "According to our western standards, the most intense phase of human energy occurred in the form of religious and artistic emotion, perhaps in the Crusades and Gothic churches, but since then, though vastly increased in apparent mass, human energy has lost intensity and continues to lose it with accelerated rapidity, as the Church proves. Organized in society, as a volume, it becomes a multiplied number of enfeebled units, on which, like the eye in insects, reason acts as an enormously multiplied lens, converging nature's lines of will, and taking direction from them, but adding nothing of its own" (p. 229).

From the same point of view also he quotes the following passage from Le Bon's volume on *Crowds:* "That which formed a people, a unity, a block, ends by becoming an agglomeration of individuals without cohesion, still held together for a time by its traditions and institutions. This is the phase when men, divided by their interests and aspirations, but no longer knowing how to govern themselves, ask to be directed in their smallest acts; and when the state exercises its absorbing influence. With the definitive loss of the old ideal, the race ends by entirely losing its soul; it becomes nothing more than a dust of isolated individuals, and returns to what it was at the start—a crowd" (p. 252). To the same effect is his approval of Eduard Meyer's dictum that "the whole mental development of mankind has, for its preliminary assumption, the existence of separate social groups" (p. 259). In a word, individualism has spelt dissipation of energy, degradation.

It is at this point that Mr. Brooks Adams takes up the story in his somewhat diverting pages on the "Heritage of Henry Adams" (pp. 1–122). The question he poses is, where lay the responsibility for the defeat of John Quincy Adams by Jackson in 1829? J. Q. Adams himself clearly held God responsible and would have made no bones about saying so had he not been deterred by his respect for his mother's feelings. Mr. Brooks Adams, however, with his brother's researches before him, now feels that it was the second law of thermodynamics which was to blame. So the decline of the Adams family is given its necessary cosmic setting.

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Readers of this volume are advised to omit the essay at the end, entitled "The Rule of Phase Applied to History." Henry Adams had all the virtues of the great amateur—penetration, aloofness, style. It is sad to record that in the end he did not escape the pitfall of most amateurs. He began taking himself seriously, and that as a prophet!

EDWARD S. CORWIN.

Princeton University.

The Defensor Pacis of Marsiglio of Padua. By EPHRAIM EMERTON. (Harvard Theological Studies, Volume VIII. Cambridge: Harvard University Press. Pp. ii, 81.)

Professor Emerton has, within the compass of some eighty odd pages, given us the best extended summary in English of the political and ecclesiastical theories of Marsiglio of Padua. To the task which the author set for himself he brought a lifetime study of history, particularly along theological lines, and this has enabled him to make those frequent comparisons and illustrations which others less well schooled would find themselves unable to do. The pleasing style in which the study is written interests the reader in a subject which most scholars make dry and uninteresting. No excuse now ought to exist to justify the author's statement that "the name of Marsiglio is unknown to most persons outside the narrow circle of students of political theory."

Those students of the political theories and issues of our day, who seem to feel that all thought about the state that is worthy of consideration is to be studied only in works of the last half century, or perhaps a century earlier, would do well to get a copy of this small book, and learn what a fourteenth century Italian had to say about the powers of the people, their rulers, and relations to each other. To historians, who feel that the weighing of historical evidence is a nineteenth century invention, it will be of interest to see how such subjects as the Papal Supremacy, the Donation of Constantine, and others, are dealt with in an age when scientific historians were not supposed to exist.

It is not to be expected that within the confines of so small a volume every possible misunderstanding of the subject could be provided against. For example, there is an implication (p. 20) that Marsiglio disappeared from the scene of action much earlier than he actually did. Even Valois concedes that he wrote a tract on divorce in 1342,

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and that he may have written at least the last passage of his *Defensor Pacis Minor* in the same year. Marsiglio's "medical training" is mentioned rather abruptly (p. 28), and the reader given no earlier indication that he was a physician.

On page 39 is to be found an extremely clever piece of linguistic work which has revealed the meaning of those hitherto puzzling words "*alto passu.*"

JAMES SULLIVAN.

New York State Historian.

American Democracy versus Prussian Marxism. A Study in the Nature and Results of Purposive or Beneficial Government. By CLARENCE F. BIRDSEYE. (New York: Fleming H. Revell Company. Pp. 371.)

In this compact little volume, rich in well selected facts and information throughout, the author has performed a useful service. The conception of socialism or of Marxism as a system of tyranny, as Bebel, Hyndman and their ilk aver, is not new; this new laurel for Prussianism is somewhat novel.

The liberal aspect of democracy in respect to many types of action is familiar. The idea, however, of the reach of democracy in allowing to the individual the basic right to own and operate in industry, compared to the Marxian tyranny that denies this basic right, attracts attention. Mr. Birdseye further contrasts Bolshevism, Spartacism and the I. W. W., "the legitimate brats of Prussian Marxism," with the other "members of the trinity, Prussian militarism and Prussian commercialism." The latter are at least orderly, impartial to all classes and prosperous. Marxism as operating in Russia offers none of these. In sharp contrast to these two systems stands American constructive, purposive democracy. The author seizes strong ground in stating that "Marxism like democracy has laws of life and growth" and will develop according to type. The greater part of the volume is occupied in tracing the practical results of American purposive government leading to the general welfare. Two chapters briefly relate Marxian methods to Prussian methods of coercion and terrorism.

In chapters eight to nineteen the actual achievements in welfare work and public control are set forth illustrative of the value of the guiding and stimulating influences of purposive government. Chapters twenty and twenty-one emphasize the need of reasonable restraint

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on industry by public regulatory agencies. The reverse side is shown in chapter twenty-one, where the checks operating on government are discussed. Several chapters are devoted to those changes whereby democratic institutions reflect the altered conditions of social and economic life. Attention might be called to the rather meager space devoted to "Prussian Marxism," but since, as Hilquit says, there never has been any socialism of Marxian or any other type, more words were scarcely necessary. Mr. Birdseye has also no doubt followed correct pedagogy in stressing the positive and leaving the negative side to shift for itself. The book should be highly useful in the comparative study of institutions.

W. B. GUTHRIE.

College of the City of New York.

Liberalism in America. Its Origin, Its Temporary Collapse, Its Future. By HAROLD STEARNS. (New York: Boni and Liveright, Inc. 1919. Pp. x, 232.)

This volume comprises a general discussion of the nature and characteristics of Liberalism, a brief sketch of American Liberalism, an account of its "collapse," and finally a forecast of the probable future.

The core of Liberalism, the author believes, is first "respect for the individual and his freedom of conscience and opinion," and second "tolerance, belief in real freedom of speech and expression." Down to 1914, says Mr. Stearns, American Liberalism had suffered severely from race intolerance exhibited toward the colored man, and from what he calls "perverted moralism" in the form of the prohibition of the sale of intoxicating liquors. But on the other hand, America's traditional hatred of all forms of servility and our practical and straightforward temperament had tended to drive us forward in spite of these factors.

With the war, he believes, Liberalism broke down before the onrush of military conditions. The conscription is the particular object of his denunciation in this connection, and to this he devotes much energy. But beyond this we did not know why we had gone to war; we were fighting for "something shadowy and unreal." Liberals were either seduced or intimidated and made no effective opposition to the war propaganda. Reason abdicated, he feels, and even pragmatism, which Mr. Stearns particularly mourns, failed to stem the tide. In rapid succession came conscription, espionage laws, liberty loan drives

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and the star spangled banner, to Mr. Stearns's intense disgust. The underlying reason was, as he sees it, that our leaders were not genuinely liberal, that the intellectual class became the hired attorney of nationalism.

Indeed, the author's contention is "that the peoples of the world were duped from beginning to end," and he believes that "It is difficult to see exactly what liberal purposes have been accomplished by the resort to arms" (p. 10). From that point of view, he seems to be dissatisfied with the war—with its avowed causes, its conduct and its consequences.

The new leadership, Mr. Stearns believes, will be less demagogic than the old, more disciplined and more intellectual. Personally he does not believe in "Bolshevism or Conservatism or Socialism or any other narrow and highly formulated economic, social or political creed." He will merely oppose violence, preach tolerance and keep out of the thick of the fight. He hopes for social revolution, but it must be brought about without a row, although he considers the prospect extremely doubtful.

In his opening pages Mr. Stearns declares that Liberalism must be or is "urbane, good-natured, non-partisan, detached," but it is unfortunate that he has not adhered to this principle throughout his volume. His plea for tolerance is marked by intolerance, for good-nature with ungenerosity in weighing the motives of others, for nonpartisanship and detachment with evident animus and one-sided advocacy rather than fairness and breadth of vision. Hence the value of the work as a critique of American Liberalism is very seriously impaired for the general reader and the serious student.

C. E. MERRIAM.

University of Chicago.

Is America Worth Saving? Addresses on National Problems and Party Policies. By NICHOLAS MURRAY BUTLER. (New York: Charles Scribners' Sons. Pp. 390.)

This volume is a collection of twenty-two addresses delivered between December, 1912, and November, 1919. Although written and delivered on diverse occasions and dealing with varied subjects they have as a common theme the "exposition and interpretation of the fundamental principles on which the American government and American society are built." According to this exposition the foundation stone

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of our system is the possession of a written constitution—"the frame of the government"—which not only grants powers but also prescribes limits to the use of those powers, and which guarantees to each individual the rights of life, liberty, and the possession of property.

Again and again the advantages of what Lord Bryce called a "rigid constitution" are emphasized. Not merely its stability but its protection against chance majority is extolled. And yet President Butler is not averse to progress. He advocates an easier method of constitutional amendment. He proposed that amendments might be submitted by a majority vote of two successive congresses and ratified by a majority of the states, provided that majority contain a majority of the population (pp. 170–171).

In dealing with social, industrial and economic problems, and in his frequent condemnation of anything resembling socialism, President Butler applies the fundamental doctrine of the possession of rights beyond the power of the government. He holds that "the fundamental purpose of the state is to preserve order, to defend liberty, and to keep open the door of opportunity" (p. 86), but he more frequently stresses the liberty to acquire property than other rights of liberty. He most properly says "a strike by a public servant is a direct assault on the whole community" (p. 92), but gives little light on the problem of how to obtain service from an unwilling laborer; while he quite properly denounces the evils of strikes in our complex industrial system, and the dangers of a strike used for political purposes (pp. 86–89) he is less definite in his proposed remedies.

In dealing with the League of Nations, President Butler insists that it "should be a society of nations, and not a society without nations" (p. 201), and in 1918 he declared that such was in actual existence, composed of the Allies and the United States. He advocates calling into operation the international court of justice urged by the American delegation at the last Hague Conference, the establishment of a single code of international law and a division of the world into administrative areas—Europe, the Americas, and the Orient—each with a modified Monroe Doctrine (p. 147). But he is strongly opposed to any form of international interference with the problems which concern the United States.

It should be remembered that the book is a collection of occasional addresses and does not pretend to offer detailed solutions for all the problems it suggests. It is an interesting discussion of these problems from one who is strongly attached to the Republican party.

EVERETT KIMBALL.

Smith College.

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Real Democracy in Operation: The Example of Switzerland. By FELIX BONJOUR. (New York: F. A. Stokes Company. 1920. Pp. viii, 226.)

Written in a pleasing style and admirably translated, this little book by Felix Bonjour, former president of the Swiss National Council, aims "to describe the mechanism of the democratic institutions peculiar to Switzerland and to explain the effects of those institutions." Accordingly rather more than half of the volume is devoted to a discussion of *Landsgemeinden*, the referendum, and the initiative. Briefer accounts are presented of federalism, elections, communes and churches, compulsory voting, democracy in the army and maintenance of neutrality, and the future of democracy in Switzerland. The appendix contains a short but effective summary of the bolshevist troubles in Switzerland during the latter part of 1918.

A distinctive feature of M. Bonjour's book is the large number of authoritative opinions on Swiss political institutions which he has gathered from many sources. The author's judgment is much more cool than might be inferred from the title of the book. It is entirely free from that strain of panegyric common to so many books on Swiss democracy. With regard to proportional representation M. Bonjour concludes that it has made the task of governments more difficult by compelling them "to be continually negotiating with parties, a troublesome business indeed, but less so here than elsewhere, thanks to popular rights and the fixed duration of ministerial office."

The author's comments on woman suffrage will not be pleasing to our militants, but there can be no doubt that they reflect Swiss opinion accurately. Although a partisan of the referendum, M. Bonjour admits that "there are periods when it is traduced by evil popular instincts, when it comes under the influence of local rivalries, and when it serves as the instrument for the spirit of routine or narrow conservatism or as the tool of demagogues." On the other hand he notes that "it puts an end to acute conflicts between people and governments, and provides one of the safest barriers there can be against revolutionary agitation. Nothing can give greater offense to those anarchist or "bolshevist" sections which wish to establish the rule of active and violent minorities."

ROBERT C BROOKS.

Swarthmore College.

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Democracy and the Eastern Question. By THOMAS F. MILLARD. (New York: The Century Company. 1919. Pp. 446, map.)

"The design of this book," declares the author, "is to present the case as it appears to an overwhelming majority of the foreign residents of the Far East." Beginning with "The Issue," of which he says, "Students of politics and conditions in the Far East . . . . . almost without exception feel that unless that part of the world is somehow relieved from the pressure of the imperial ambitions of Japan, another war, which beyond doubt will involve several of the western powers, including America, is inevitable," Mr. Millard proceeds in twenty well arranged chapters to give what may be described as a documented history and analysis of the major events and tendencies in the international politics of the Far East during the past five years (1914–19), arriving in the final chapter, entitled "The Solution," at a series of constructive suggestions.

More than any of the author's previous works, this book is a structure of exhibits—from all sorts of documents, official and unofficial—set in a mortar of comment and interpretation. Its composition is at once its strength and its weakness. To the serious student it will be immensely useful because it has the documents; to the reader who has only appetite or time for predigested, epigrammatic political information, it will seem a somewhat tough, discouragingly hearty offering. However, nowhere else among books as yet available is there to be found so thorough a study of political developments in the region and in the period of which Mr. Millard here treats. Combining features of an epitome, a compendium, a handbook and a treatise, it is unfortunate that this book has—in common with Mr. Millard's previous contributions—no index.

During the period which this book covers, Mr. Millard lived in China, in the United States, in Paris, and on the highways back and forth. All the time he was extending the number and the variety of his contacts. In his last preceding book he wrote particularly as an American addressing Americans. In this, he has written as a student of world politics addressing all who care or may have occasion to consider the courses which political currents are running. Long since convinced that Japanese imperialism is a menace to world peace, Mr. Millard directs attention to the battle which has just been waged in the West between militarism and democracy. The issue, he contends, is the same in the East. "Born almost exactly at the same

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time with modern Germany, modern Japan, in adapting herself to modern civilization, has conformed almost exactly to the German political system, the German thesis of statecraft, the German military organization, the German conception of *welt-politik*, and the German methods of playing that game. Intelligent Japanese do not dispute this. . . . ."

The book contains four chapters on "China and the War," in which are accounts both of external and of internal affairs, of the twenty-one demands, the Lansing-Ishii notes, of Shantung, of propaganda, and of related subjects; two chapters on "Economic Imperialism;" two on "The Siberian Situation." One of the most illuminating chapters, least controversial and most calculated to stir American thought is that entitled "The Corruption of a Nation." In the course of his discussion of the question "What is the open-door policy in China," Mr. Millard says, "My idea of a real open-door policy . . . . . would inhibit the method that is coming to be called economic imperialism." He believes in international but not bi-national assistance to China; consortium loans, under international supervision, yes, but "American-Japanese (exclusive) coöperation," not for a moment. He contends for the abolition of "spheres of influence," of foreign leases, of various monopolistic concessions, and of extra-territoriality. He propounds and explains the paradox that "to diminish foreign intervention in China's administrative processes it is first necessary to increase it,"—but by the introduction of international assistance.

"Put succinctly, China's appeal to the democratic nations amounts to a cry to be delivered from the old system of predatory penetration and exploitation . . . . and to be allowed, and helped, to work out a peaceful national destiny on democratic lines." The United States, he points out, is under specific obligations to assist, and the United States has a practical interest in the future of China second to that of no other power. "Taking the case of China *in toto*, it presents almost an ideal test to apply to the announced principles of the major nations in prosecuting the war and in making the peace. . . . . If China's case does not get sympathetic attention and just treatment by the world, it will not be possible for anyone who knows the realities of international politics hereafter to hear their altruistic professions with any confidence or respect."

STANLEY K. HORNBECK.

Washington, D. C.

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The Truth about China and Japan. By B. L. PUTNAM WEALE (Bertram Lennox-Simpson). (New York: Dodd, Mead and Co., 1919. Pp. 248—Text, 155; appendices, 93.)

This book originated in a series of articles written in anticipation of the Peace Conference and published in *Asia* early in 1919. "Written primarily to allow the reader to see at a glance what the position really is today in Eastern Asia, and to explain precisely why there should be conflict between China and Japan," it has all the positiveness, self-assurance and readability which habitually characterize Putnam Weale's works. Master of condensation, generalization, and epigrammatic presentation, Weale no longer purveys detail; he has produced in the course of the past twenty years eight serious volumes on Far Eastern politics; he may be assumed to know his subject; and he apparently credits his readers with some knowledge of some parts of it.

A hundred word preface wherein the author declares ". . . . Japan has a double policy, one policy for the East and another for the West; . . . . she uses military power and secret loans to advance the first, and diplomacy and publicity the second; and . . . . this intricate matter can be understood only by exploring the history of the remote past," gives the key to the "General Introduction" (Chapter I) in which he outlines in striking splashes of black and white the historical conflicts and the fundamental differences between the Chinese and the Japanese races and establishes the *motif* in Japan's China policy. In Chapters II, III and IV he indicates what in his opinion are the outstanding Far Eastern problems and what solutions should be given them.

Chapter IV on "The Problem of Peking," is perhaps now the most important. It begins with a comparison and a contrasting of the problems of China and of Turkey, and it concludes with the statement that "the problem of Peking should be made the problem of Europe and America. . . . ." Among other things, Weale pays his respects in most uncomplimentary terms to "Peking diplomacy;" he pleads for a "real Chinese service of the national debt;" he declares in reference to railways: "Centralized control must be brought to China—with every railway on Chinese soil controlled from Peking;" and he contends that foreign garrisons should be withdrawn. In Chapter V, he raises a number of questions to which Japan would find it difficult to give satisfactory answers. Like Mr. Millard, he considers Japan another Germany, particularly because in the determina-

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tion of policy the military is more powerful than the civil authority. It is the ambition of individuals, not the urge of popular and national necessity, that motivates Japan's incursions on the Continent. Korea, Manchuria and Shantung have the increases of their indigenous populations to accommodate; "it is not true that these regions are necessary for the overspill of the Japanese population." The problem growing out of Manchuria and Shantung "is a world problem which has to be faced and solved or else there will be a fresh world disaster."

In reading Weale it should always be remembered that he was favorably and sympathetically disposed toward Japan until after the break in that country's policy which followed the conclusion of the Portsmouth treaty, since which time he has become gradually more and more emphatic in his denunciation of Japanese policies and methods.

STANLEY K. HORNBECK.

Washington, D. C.

Korea's Fight for Freedom. By F. A. McKENZIE. (New York: Fleming H. Revell Company. Pp. 320.)

It is twelve years since Mr. McKenzie published his *Tragedy of Korea*, which contained some highly interesting sketches of the disturbances in Korea following the first encroachments of the Japanese upon the peninsula after the Russo-Japanese war. The present book is much more carefully organized than its predecessor. It contains a reasonably complete summary of modern Korean history, from the American-Korean treaty in 1882 till 1919, including four chapters on the "independence movement" of 1919 and the harsh measures taken by the Japanese to suppress the so-called "insurrection." The book concludes by suggesting a policy to be adopted by the Christian nations of the world, especially America, a policy of protest against the reign of terror which the Japanese military party has initiated in Korea. The author sees in the future, unless the Japanese can be brought to their senses by such a protest, a growing unrest in the Far East among Japan's subject races which will culminate in a great war in the Pacific, into which America will inevitably be drawn.

This book deserves a wide reading. It breathes a real humanitarian interest in the present unhappy fate of over ten million people; and on its constructive side suggests a way out of a Far Eastern situation full of dangers for the American people.

W. W. McLAREN.

Williams College.

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International Waterways. By PAUL MORGAN OGILVIE, M.A. (New York: The Macmillan Company. Pp. 424.)

This volume is divided into two parts differing widely in purpose and content. The only portion of the work that is of interest to the educated public is contained in Part I, which (in eight chapters covering 171 pages) presents a general survey of the "Evolution of the Principle of International Waterways."

The remainder of the book, consisting of 253 pages (including a good index), is entitled "A Reference Manual to the Treaties, Conventions, Laws and Other Fundamental Acts governing the International Use of Inland Waterways."

Although the main title, "International Waterways," is sufficiently broad to include anything relating to the subject, the reviewer confesses to a certain disappointment in finding but one chapter devoted to "The Freedom of Navigation on Inland Waterways." In its emphasis upon the importance of the adoption of the principle of free navigation of inland waterways at the Congress of Vienna, the preface had led him to expect a more extended discussion of this subject, whether from the standpoint of general principles or in its historical aspects. However, in a subsequent treatise concerning "International Rights on Inland Navigable Waterways" we are promised "a systematic examination of physical and political conditions warranting universal navigation on inland waters and consideration of the ancillary uses which appertain to the riparian states."

The bulk of the reading matter contained in this volume relates to the much discussed subjects of the "freedom and sovereignty" of the seas treated mainly in their historical aspects. Though the topic is well-worn, there is still room both for general treatises or for particular researches and investigations. But the book under review hardly fits into either category, though it contains much valuable information and a number of keen interpretative observations. Such, for example, is the distinction between sea power and dominion on the sea on page 108.

In a work which is evidently intended to serve as a sort of introduction to a subsequent treatise on the "Free Navigation of Inland Waterways," it seems somewhat incongruous to devote so much space to the maritime enterprises of the Phoenicians and the Carthagenians, the navigation laws of the Greeks and the Romans, the so-called Rhodian Law (of whose actual content we are in almost complete ignorance), or the codes of maritime laws in the Middle Ages, however important in

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themselves. Even the navigation laws of Babylon are not wholly overlooked.

It is doubtless well to be retold the story of the discoveries and explorations of Columbus and his successors, of the rise and fall of Venetian sea power, of the outrageous claims of Spain and Portugal to the sovereignty of the seas based on Papal bulls, and of the commercial and naval rivalries of the Netherlands, Great Britain and France. But these stories have been retold over and over again and in much more attractive form than here presented. Of these matters our author has told us either too much or too little, and the occasional interpretive light thrown upon these events hardly justifies their retelling. It should, however, be pointed out that Chapter VII contains some subject matter not readily accessible elsewhere than in this volume relating to the laws of registry of various countries; and also that Chapter VIII contains some valuable information and shrewd observations on the freedom of navigation on inland waterways.

The Reference Manual, or Part II, should prove extremely useful to students of the law of inland waterways. It includes lists, alphabetically and chronologically arranged, of the international inland and boundary waterways of the world by continental divisions.

Under each river, lake, or canal thus listed are full references to "conventional arrangements and laws regulating the enjoyment of the ancillary uses,—notably participation in the fluvial and lacustrine fisheries and the diversion of waters for power, irrigation, and the maintenance of canals,—together with the agreements governing navigation." The preparation of these lists must have involved an enormous amount of labor.

AMOS F. HERSHEY.

University of Indiana.

Socialism versus Civilization. By BORIS L. BRASOL. With introduction by Professor T. N. Carver. (New York: Charles Scribners' Sons. Pp. xxiv, 289.)

Socialism in Thought and Action. By HARRY W. LAIDLER. (New York: The Macmillan Company. Pp. xviii, 546.)

These two recent books study socialism from two different points of view and are valuable supplementary volumes. The first is a critique of Marxian Socialism with an evident animus. Sweeping

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generalizations abound with here and there such loose statements as the following: "Land and natural resources, such as minerals, electricity, air, water-power, etc., have a definite economic value and also a definite market price no matter whether labor has or has not been applied to them" (p. 62); "This brings us back to the true American conception of equality, which for centuries has proved to be sound, namely, to the *equality of opportunity*. Every citizen may become President. Every citizen may become wealthy" (p. 75). With this author socialism always means socialism of the left, or the radical type.

In the second book, by the secretary of the Intercollegiate Socialist Society, is a scholarly presentation of the socialistic indictment of modern society; of socialist theory; of the socialist commonwealth as outlined by various and sometimes opposing schools of thought; of guild socialism and syndicalism. Tendencies toward socialism are sketched and objections discussed. Part II is given to a historical presentation of the socialist movement with a sketch of developments in various countries since 1914.

The contrary viewpoints of these two books is illustrated by the following: Brasol says that Socialism aims at the abolition of private property, the extermination of the capitalistic class, the abolition of the "bourgeois family," the abolition of nationalism and religion. He holds that socialism advocates the forcible and violent overthrow of the existing social order (p. 2). Laidler quotes abundantly to the effect that a large school of socialists do not believe in the abolition of private property (p. 124); that the official attitude of socialists toward religion is that of neutrality (pp. 154–159); that the socialist movement as such has never officially taken any stand concerning the family, but that multitudes of adherents believe that socialism would strengthen the monogamic system (p. 160); that a large wing of socialists are against the use of violent methods in securing their objective (pp. 164–169).

Thus while Brasol's treatise is a valuable criticism of radical socialism, it fails to meet in a convincing way, the issue as raised by Laidler, Spargo, Vandervelde, Rauschenbusch and others, although the constructive proposals given in the last chapter might to some extent at least mitigate the admitted evils of the present system. His suggestion concerning a national institute of production is especially worthy of consideration.

LUCIUS M BRISTOL.

University of West Virginia.

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The Unsolved Riddle of Social Justice. By STEPHEN LEACOCK. (New York: John Lane Company. Pp. 152.)

In this little book Dr. Leacock has essayed almost as great a task as the young Scottish probationer who announced that the theme of his sermon would be the Universe, God and Man, and that he would give ten minutes to each head. In some thirty thousand words Dr. Leacock states the social problem, expounds and criticizes the practice of individualism and its theoretical interpretation in the classical economics, condemns the alternative that socialism offers, and expounds a *via media*. Yet in the flood of special treatises there is much to be said for such an endeavor to see the problem whole and from a single viewpoint.

The first chapter restates the paradox of progress and poverty, given fresh point by the war's revelation of peace time superfluities, and of the tremendous slack that could be taken up in emergency. Then follows an analysis of the economic theory which the classical school devised to explain and defend the individualism on which our present society rests. The analysis is clear and coherent but perhaps unduly simplified; a defender of the old economists would ask for proof of the assumption that they taught that every factor in production got out what it put in, and for a fuller analysis of the meaning of cost in the equation between cost of production and value. In a later chapter the author discusses the bearing of monopoly factors and bargaining power on prices and wages. The unworkability of socialism as an alternative is demonstrated by a criticism of Bellamy's *Looking Backward* which is certainly conclusive, though most readers would prefer to have the author's views on Cole, or Smillie, or Lenin.

In conclusion, Dr. Leacock sets out his own program of individualism modified by social control, with equality of opportunity through education, state provision of employment—hardly consistent with the previous denunciation of bureaucratic futility—social insurance, and legislative regulation of the conditions of employment, as in the reduction of working hours below the intolerable eight a day now prevalent.

As would be expected, Dr. Leacock writes with great clarity and force. While the limits of the volume do not permit detailed treatment of any of the topics taken up, the reader will find every page suggestive and will be thankful for a chance to see the woods instead of the trees.

O. D. SKELTON.

Queen's University, Kingston, Canada.

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Italian Emigration of our Times. By ROBERT F. FOERSTER. (Cambridge: Harvard University Press. 1919. Pp. xv, 556.)

Students of immigration and population problems are placed under a great debt to Professor Foerster for the preparation of this volume. Unlike most American writers on immigration, Professor Foerster deals with his subject in its larger aspects and relationships. Only four chapters (91 pages) of his book are devoted to the special problems of the Italian immigrant in the United States, and these are the least valuable and in many ways the least satisfactory chapters of the whole book. This latter statement is not made in the spirit of criticism, for the literature of this aspect of the subject is so abundant and so accessible that students may easily digest and interpret it for themselves. Nine other chapters of Professor Foerster's book deal with the subject of Italian emigration to other countries. Especially valuable are the four chapters (97 pages) dealing with the Italian immigrants in the Argentine and Brazil, for these chapters in the history of Italian emigration are full of interest to those who would understand the Italian in the United States.

But the especial importance of Professor Foerster's work is the careful analysis of the causes of emigration, of the effect of this movement on the Italian nation, and of its probable future,—for the future of Italian emigration can be forecast only as a result of such an investigation of emigration at its source as Professor Foerster has made. As a result of his searching study of the Italian state papers, such as the *Inchiesta Agraria,* the *Inchiesta Parlamentare,* and the *Bolletino dell'Emigrazione,* and of his wide acquaintance with the other Italian literature of his subject, Professor Foerster has presented a scholarly and interesting account of the emigration movement properly set against its Italian background.

Italy has been, as Professor Foerster points out, one of the few great emigrating nations. In South Italy, emigration has been "well nigh expulsion; it has been exodus, in the sense of depopulation; it has been characteristically permanent." The picture of the Italian peasant roused from an "age-long lethargy" to flee from the profound economic disorders, the social maladjustments and the extremities of poverty of his native country is a thrilling story, and it is a story that must be studied by those who wish to understand the Italian peasant in his efforts to adapt himself to the complex social and economic life in his new environment.

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As regards the mentality and character of the emigrants who return to Italy, opposing views are presented (pp. 458–459). Nitti's opinion "that emigration is a distribution of scholarships" and that it "is not possible to measure the gains in knowledge nor the inferences from experience that emigrants bring back. They have seen the world and lived in it and have grown indefinably in stature; something that has been dormant has come to awakening; where blankness was, positive wisdom has surged forth"—may be contrasted with a statement by Professor Bordiga in his report on Campania: "It must be confessed that the great majority of the emigrants depart illiterate and return so, and at home have no influence on the spirit of the country, the course of public affairs, and so forth."

Two other valuable features of the volume should be noted: the heroic struggle with the emigration and immigration statistics of the Italian and other governments from which Professor Foerster emerges with as much success as may be had in this baffling field; and his valuable detailed account of the work carried on by the office of the commissioner-general of emigration in Italy and the corresponding emigration council. Here Italy has initiated a unique and valuable social experiment, the results of which may now, thanks to Professor Foerster, be more widely known and carefully studied.

EDITH ABBOTT.

University of Chicago.

Our Italian Fellow Citizens. By FRANCIS E. CLARK. (Boston: Small, Maynard and Company, 1919. Pp. ix, 217.)

It is a pity that a book prompted by such good spirit as this should be woven together of such thin tissue. The title is misleading, for nearly the whole volume treats of Italy and Italians, with slight reference even to emigration, not to speak of "fellow citizens"—unless the character of the last can be said to be made clear by explicit eulogy of Marconi and denunciation of d'Annunzio. The attractive illustrations are mainly unrelated to either title or text—one is a picture of "Lake Stresa," which does not exist. A pilgrimage to Benevento discovers the fact that this capital city is "in Foggia," where it has doubtless been since Baltimore became a city in New York. Yet even such grotesque errors are probably to be expected. The author's familiarity with the Italian language—there is plenty of support for the guess—does not go beyond the phrase-book. Writing in the year 1919, he

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draws frequently for his material upon King and Okey's *Italy Today*, published 1901, even for authority for "pre-war" wage statistics. Such conclusions as he reaches have generally little relation with what has gone before, just as what has gone before has little relation with the book's announced themes. Actually half the space of a chapter on "The Italian of the North" is given to the Waldensians, who might have been omitted altogether, and a chapter on "The Italian of the South" contains little save casual observations made on a railway excursion to Benevento and a short way beyond. In the circumstances, nothing would be gained by expatiating here on the book's contents.

ROBERT F. FOERSTER.

Harvard University.

The Decline of Aristocracy in the Politics of New York. By DIXON RYAN FOX. (New York: Longmans, Green and Company. Pp. xiii, 460.)

This valuable monograph gives a detailed account of the gradual transfer of power from a narrowly limited class of freeholders to an electorate comprehending all the male citizenship, with reference to the party groupings that accompanied the process and shaped its phases. The work is based upon primary sources and is a monument of extensive research and minute investigation. In effect, it collects the particulars of the political history of New York from 1800 to 1840. It was a period that was rich in party developments. Federalists, Jeffersonian Republicans, Jacksonian Democrats, Whigs, Locofocos and Antimasons appeared upon the scene. Their composition, aims and leadership are described, giving so full a view of party struggles, that at times one can hardly see the wood for the trees. The work has great merits, principally those resulting from diligence in collecting materials and skill in arranging them. A feature that lends interest to the narrative is the vivid personal characterization with which the author from time to time relieves what keeps tending to become a monotonous record of faction wrangling.

HENRY JONES FORD.

Princeton University.

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Public Opinion in Philadelphia, 1789–1801. By MARGARET WOODBURY. (Northampton, Mass., Smith College Studies in History. Pp. 138.)

In this thesis Dr. Woodbury has given a careful study of the capital of the nation at the time of the first sharp party division in national affairs and when Philadelphia had more and better newspapers than any other city in the country. Not the least interesting and important part is the conclusion in which in three pages we have an admirable summing up giving a clear view of the situation. The influence of the work of Professor McMaster is clearly discernible and we have an intelligent application of the methods of research and presentation which have made his volumes such interesting and valuable contributions to a knowledge of the American people and their opinions in current affairs. It is to be hoped that this will be the forerunner of a series of such intimate studies of local views concerning important eras and developments. The chief sources of the study are the newspapers and the pamphlets of the day. Alexander Hamilton naturally fills a large part of the well drawn picture.

CLINTON ROGERS WOODRUFF.

Philadelphia.

The Street Surface Railway Franchises of New York City. By HARRY JAMES CARMAN, Ph.D. (New York: Longmans, Green and Company. 1919. Pp. 248.)

This monograph traces the franchise history of the street surface railways of Manhattan Island. Seven hundred twenty-six railway companies have been organized to operate steam, surface, elevated and subway lines within the present limits of greater New York. Over four hundred of these are now extinct, about two hundred others have lost their identity, and many others are operating under a lease or agreement. This study is limited to those companies whose lines were consolidated to form the present street railway systems on Manhattan Island.

The history covers street railway grants under the following periods: previous to 1850, 1850-60, 1860-75, 1875-84, 1884-97. There are also special chapters on "The Fight for Broadway" (1852-84), on "The Era of Consolidation," and on "Franchise Grants under the Charter of Greater New York." A half dozen pages are devoted to an inclusive bibliography.

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The study is based on a thorough search of sources and is a creditable doctor's thesis. It makes available to the student in detail the historical background of many of the present street railway difficulties.

The author deducts the following conclusions:

1. It can scarcely be said that New York City has ever had a scientific franchise policy; rather it has been blindly groping to evolve such a policy. Until the creation of the Greater City, the franchise-granting body, whether common council or state legislature, awarded franchises to those individuals or corporations offering the greatest monetary inducement or exercising the greatest political influence.

2. In making franchise grants, the public was utterly disregarded. Ordinances were rushed through with practically no opportunity for publicity or careful consideration.

3. The executives, both state and municipal, by their veto power made a greater effort to protect the interests of the public than did the legislative bodies.

4. The majority of the grants were given in perpetuity, were exclusive or monopolistic in character, and invariably brought little revenue to the city.

5. The franchise grants or contracts were loosely drawn and the conditions embodied therein were trivial in character; no provision was made for financial regulation.

6. Consolidation of the independent lines was accompanied by overcapitalization, high rentals, and stock-jobbing.

These observations force us to conclude that today, with the awakened interest in public affairs, the city should formulate a definite and comprehensive program with respect not only to its street railway franchises but also to other public utilities.

In this connection it is interesting to note the recommendations made by the committee on franchises of the National Municipal League at its Detroit meeting, November 22, 1917.

CLYDE L. KING.

University of Pennsylvania.

Policeman and Public. By ARTHUR WOODS. (New Haven: Yale University Press. 1919. Pp. 178.)

Most of the few books published in this country on police work have been historical in style or purely technical. None compares with this volume of lectures by ex-Commissioner Arthur Woods of New

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York in presenting the subject from the policeman's point of view. He uses everyday speech and shows in a refreshing manner the mental processes of the "cop," rather than the mere mechanism of the work.

Very few men in the United States who have not done actual police work appreciate, and most of those who have done such work cannot clearly express, the difference between law from the viewpoint of the lawyer, judge or the district attorney, and from that of the policeman. The characterization of the policeman as constituting in himself a court of first instance, while not novel, is apt. In similar manner the chapters on rewards and punishments, graft, influence and the criticism of civil service promotions, show the grasp of a man who has studied policing at close range, who can think like a policeman, but who expresses himself in a clear and forceful manner interesting alike to civilian and policeman.

Few American departments have any course of instruction worthy of the name for new men or new superior officers, and in those courses which do exist, the instruction is almost wholly in military drill, rules and regulations, and "legal law"—not "policeman's law"—all too often given as a favor or a sideline by some lawyer or court official to the inevitable befuddlement of a recruit on the street. It would be very much worth while if this book were read by every civilian police commissioner in the United States, and then have it or an adaptation of it made a textbook for the instruction of police superiors and above all of the new man in police work. Assuming an honest department with a desire to improve, a study of this book would be as worth while for the spiritual and constructive side of police work as the study of the department rules and regulations is for the mechanical side.

G. H. McCaffrey.

Boston, Massachusetts.

The Free City! A Book of the Neighborhood. By Bouck White. (New York: Moffat, Yard and Company. 1919. Pp. 314.)

This book is an impassioned plea for home rule for cities. It is also a bitter attack on national government, especially "the Potomac scheme." The greater part of the book is devoted to pictures of free cities—"City States," "Industrial Democracies," "Communes," "Guild Cities," and the "municipality" at large. The entire field of history, both sacred and secular, is combed for examples and illustrations. Rome, Athens, and Jerusalem each have a fervid chapter.

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The Hanseatic League cities, Florence and other "Mediterranean communes," as well as certain guild cities of Asia, are vividly pictured. The rest of the book is devoted to the author's philosophy, and to his interpretations of history and the mind of Deity.

The book has a great many beautiful passages, too many of which are offset by ugly epithet. It contains much accepted truth, often violently interpreted. The style is fantastic and disjointed. The text is full of extravagant and mystical descriptions of the "municipality" or "The Free City," which the author declares is "a piety, a spiritual adventure, a mysticism, aye, a love story," "made up of great people," "God's attempt to build for himself a habitation."

The conclusion is given that all ills of society result from our present form of government, and that if we could revert to the federation of free cities of the ancients we should develop all splendors, all social and civic virtues, unselfish citizens, patriots, geniuses, workmen who build beautifully.

MRS. ALBION FELLOWS BACON.

Evansville, Indiana.

The Housing of the Unskilled Wage-earner. By EDITH ELMER WOOD. (New York: The Macmillan Company. 1919. Pp. 321. Index.)

In the title of this book Mrs. Wood sets herself a problem which she fails to solve—and which no one else as yet has solved. There are intimations in various parts of the volume that building at cost with money furnished by the government is the solution. Yet toward the end the author herself says that it would be impossible for the government "to supply *all* the houses needed by wage-earners." There is no intimation as to how far short it might be expected to fall except in the immediately succeeding sentence: "Unless prevented in the interest of public health there would always be a residuum of people—the unfortunate, the ignorant, the shiftless, the miserly, the physically, mentally or morally subnormal—who would be willing to live in cellars or dark rooms, in filth and dilapidation, to save a few dollars a month of rent."

As this quotation indicates, the author has not gone into her problem deeply enough to present it clearly and logically. There is a lack of definitions and of standards—curious in a book dealing so largely with housing legislation—which not only weakens the argument but indi-

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cates that the author herself has not a clear conception of relative values. Those who will be most irritated by this lack will be those who believe in government aid.

But if the argument is not so strong as it might be, there are chapters in the book telling of the extent of bad housing in the United States, giving a résumé of the history of American housing reform, describing housing legislation and the work of "model" housing companies, summarizing the housing experience of other countries—especially in the matter of government aid in financing—that are of real value by putting at the service of the reader in compact form a mass of information which heretofore has been available only in scattered pamphlets and reports.

JOHN IHLDER.

Philadelphia.

Workingmen's Standard of Living in Philadelphia. A report of the Bureau of Municipal Research of Philadelphia. By WILLIAM C. BEYER, REBEKAH P. DAVIS and MYRA THWING. (New York: The Macmillan Company. 1919. Pp. x, 125.)

The purpose of this study is to find out what annual income is needed under prices prevailing in the autumn of 1918 to give a fair standard of living to a family of five. The sum is found to be $1636. The equivalent of the Chapin figures of 1907 under prices prevailing in 1918 would be $1751.

The elements entering into the standard living costs of this standard family have been given in sufficient detail so that it may be possible at any time to ascertain the current cost of each item therein, and thus to find the cost of this standard of living at any price level. The volume represents a creditable bit of research work.

Inasmuch as the immediate object of the book is to find out what would constitute a fair minimum wage for unskilled public employees, the authors make the following recommendations:

1. That the city government of Philadelphia, acting through the finance committee of council or through the civil service commission, adopt the standard of living herein outlined as a basis for ascertaining currently the amount of a living wage for manual workers.

2. That the cost of this standard be ascertained at least once a year by the city government, preferably just before budget-making time.

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3. That in fixing the wages of manual workers above apprentice grade no wage be made lower than the ascertained cost of this standard.

4. That at least once in five years a new investigation be made with a view of modifying the standard so that it will conform to any changes which may have taken place in the living standards of workingmen's families.

5. That standards of living similar in general outline to the one herein suggested for manual workers be devised for other occupational groups to serve as a basis for adjusting the rates of compensation applying to these groups.

These recommendations differ from the usual method of measuring a fair wage in that complete recognition is given to changing living standards.

CLYDE L. KING.

University of Pennsylvania.

The Anatomy of Society. By GILBERT CANNAN. (New York: E. P. Dutton and Company. 1919. Pp. 216.)

"Humanity has a will backed by the creative will which animates the universe"—this sentence gives the clue to the author's social philosophy and scheme for social reorganization, and reminds us strongly of Comte and Ward, though without the logic of either. The first chapter on "Definitions" would have been stronger if he had stopped to define some terms and phrases which he uses later in the book. This would have made clearer his meaning when he contrasts work with drudgery, vision with law, nature with human life, organization with structure, the democracy of patriarchalism and economic power with the democracy of humanity. It might, too, have made unnecessary the statement that "an excess of goodness is as enervating to human life as a monotony of sunlight."

Authority, he holds, "lies in the social contract by which the individual acknowledges his social relationship in return for the advantages that can be won for humanity." Marriage is looked upon as essentially a contract to be dissolved as any other contract—especially when it fails to be creative of spiritual values. Women are considered to be especially qualified for citizenship in this reconstruction period as they are nearer to the spirit of humanity and less bound by customs, traditions and the "structure of finance"—the curse of modern European civilization.

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The chapter on "Social Structure" seems to have given the title to the book, but the "structure" is not set forth clearly. The key to the chapter seems to be this sentence: "In the social structure the pendulum is public opinion, which, when the authority of the democracy of the artists and scientists is established—as it can be done by education—should swing so freely and with such momentum as to defy manipulation." One cannot get far in social science by building on figures of speech.

The author is a radical idealist, a humanitarian, an artist-novelist, but he is neither a sociologist, a psychologist nor a logician. The book, therefore, which is ostensibly a sociological treatise, is a keen disappointment.

L. M. BRISTOL.

University of West Virginia.

The Ethics of Coöperation. By JAMES H. TUFTS. (Boston: Houghton Mifflin Company. 1918. Pp. 73.)

The term "coöperation" in this monograph is used in its general derivative sense to connote associated action. Coöperation in this sense is contrasted with social organization characterized by dominance or by competition. "Dominance implies inequality, direction and obedience, coöperation implies some sort of equality, some mutual relation." Coöperation involves "contacts of mutual sympathy rather than of pride-humility, condescension-servility." The three above types of social organization are contrasted with reference to their provision for liberty, power and justice. Coöperation is stated to have as working principles "common purpose and common good," but the looseness of this definition is felt when the author describes as "coöperation" the relations of producer and consumer, employer and laborer.

The essay is deductive throughout except for a very brief historical statement. Though it is well written and at times epigrammatic, one feels that a more valuable contribution could have been made by a more specific use of the term "coöperation" and by analysis of the values of existing coöperative practices in the industrial field. No mention is made of the movement for economic coöperation among consumers or producers, or of the moral values of the diffused responsibility, the habits of mutual service and the philosophy of self-help through service which this movement cultivates.

JAMES FORD.

Harvard University.

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MINOR NOTICES

The series of *War Volumes* published by the *New York Times* constitute the most comprehensive war history yet published. These twenty volumes make up a veritable war encyclopedia and cover every phase of the great conflict. The military aspects of the struggle form the main theme, of course; but the political and economic problems of these dramatic years also receive adequate attention. No individual author or group of authors could have acquired the facilities which the *New York Times* possessed in the gathering of this material. From the very outset of the struggle *The Times* had its correspondents at every belligerent capital and its representatives as close to every front as it was possible for any noncombatant to go. Its observers were stationed in every zone, and what it could not learn through members of its own staff, the *New York Times* managed to acquire through cooperative arrangements with some of the leading European journals. In this way a great mass of official data was gathered and the best of it has been incorporated in the *War Volumes*. The work is not a mere narrative, but also includes reprints of a great many important documents which are nowhere else accessible. Diplomatic correspondence, for example, military reports, the speeches of diplomats and statesmen, official communiques, and so forth are all inserted at their proper chronological places where they can be easily found. For this reason, among others, the series is as valuable to the student of public affairs and international politics as to the general reader. A set of useful maps accompanies the series and the final volume is devoted to an index.

Two recent volumes of interest to students of international affairs are Elizabeth York's *Leagues of Nations, Ancient, Mediaeval and Modern* (London, The Swarthmore Press, 337 pp.), and Carles Sarolea's *Europe and the League of Nations* (Macmillan 317 pp.). The former contains a survey of ten actual or proposed leagues of nations from the time of the Greek confederation to the Holy Alliance. Of especial interest are the chapters on Henry the Fourth's "Grand Design" and Rousseau's "European Federations." The book is well written throughout and contains an excellent list of references. Mr. Sarolea's volume is a collection of essays dealing with the interest of the various nations in the project of world federation. The most striking chapter of the book is one entitled "Abraham Lincoln versus Clemenceau."

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Major General E. H. Crowder has set forth in his volume on *The Spirit of Selective Service* (Century Co., 367 pp.) a somewhat detailed but altogether interesting account of how the national army was raised to an unprecedented strength during the late emergency. He describes the entire machinery of registration, classification and calling to the colors. It is General Crowder's belief that this machinery, or something akin to it, could be profitably used for carrying through great national enterprises in time of peace.

Several volumes in the historical series known as the *Chronicles of America*, edited by Professor Allen Johnson and issued by the Yale University Press are of great interest to students of political science. Conspicuous among these is Professor Samuel P. Orth's *The Boss and the Machine* (203 pp.). This book deals in most illuminating fashion with such topics as the rise of the machine, the politician and the city, Tammany Hall, the lesser oligarchies, and the reform of party organization. The author wields a trenchant pen and delineates his portraitures with skill and vividness.

Among recent manuals of Americanization mention may be made of *The New American Citizen: A Reader for Foreigners*, by Frances S. Mintz, which is published by the Macmillan Company. It contains suitable material for the instruction of adult foreign pupils in evening schools. *Social Problems*, by E. T. Towne, published also by Macmillan, is a textbook for beginners in the field of social studies. *Lessons in Democracy*, by Raymond Moley and Huldah F. Cook, is a manual for adult immigration classes, which the same publishers have brought out.

The Atlantic Monthly Press of Boston has issued Joseph Husband's *Americans by Adoption* (153 pp.), which contains biographical sketches of nine foreign-born Americans, among them Carl Schurz and Jacob A. Riis.

Among miscellaneous volumes which will be of interest to many students of political science, mention may be made of the following: Carleton H. Parker, *The Casual Laborer and Other Essays* (Harcourt, Brace and Howe, 199 pp.) which contains an illuminating chapter on "The I. W. W.;" William J. Robinson's *Forging the Sword* (172 pp.) which gives a graphic story of the life and training of the 76th and 12th

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Divisions at Camp Devens; Homer B. Vanderblue's *Railroad Valuation by the Interstate Commerce Commission* (Harvard University Press, 119 pp.) which is a reprint of various articles from the *Quarterly Journal of Economics;* O. F. Boucke's *Limits of Socialism* (Macmillan Co., 259 pp.); Ralph Albertson's *Fighting without a War* (Harcourt, Brace and Howe, 138 pp.), which is an account of military intervention in North Russia; and Col. C. L. Malone's *Russian Republic* (pp. 153) by the same publishers.

The Neale Publishing Company has issued a small volume on *Juridical Reform*, by the Hon. John D. Works of California (199 pp.). The book contains a critical comparison of pleading and practice under the common law and equity systems of practice, the English judicature acts, and the codes of the various American states.

International Commerce and Reconstruction by Elisha M. Friedman is issued from the press of Messrs. E. P. Dutton & Co. The book deals with those economic changes which have been going on beneath the spectacular military campaigns of the past half dozen years. It is a sequel to the author's *Labor and Reconstruction in Europe* but, unlike this volume it takes a definite stand on the issues presented. The book contains a great deal of useful and timely information, statistical and otherwise.

Messrs. Boni and Liveright have published *Current Social and Industrial Forces* by Professor Lionel D. Edie of Colgate University. The substance of the book is made up of selections from the writings of many authors, including Walter E. Weyl, J. A. Hobson, Thorstein Veblen, Herbert Croly, Graham Wallas and many others. For university students the volume is intended as a rallying-point from which further inquiry into current social and industrial forces may be made. It integrates and organizes some of the best contemporary thought.

Under the title: *The Constitutions of the States at War, 1914–1918*, the Government Printing Office has issued a compilation of considerable value to students of political science. In all, the constitutions of thirty-three countries are printed under the editorship of Herbert F. Wright. A brief historical note precedes each constitution.

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General von Falkenhayn's book on *The German General Staff and Its Decisions, 1914–1916* (Dodd, Mead & Co.,) sets forth the operative ideas by which the German headquarters were guided during a critical period of the war. The narrative is confined strictly to military topics with little stress on political developments.

The *Canadian Annual Review of Public Affairs*, for 1919, contains the usual quota of excellent articles on all phases of Canadian government, economics and local affairs. It is issued by the Canadian Annual Review, Ltd., Toronto.

Messrs. Harcourt, Brace and Howe are sponsors for a volume on *The New Germany*, by George Young (333 pp.). The book contains chapters on the revolution, the reaction, the era of council government, and the new constitution. An English translation of the new constitution is printed in the appendix.

The same publishers have brought out Herbert E. Gaston's book on *The Nonpartisan League* (325 pp.) The author has been employed on the publications controlled by the league and this has kept him in close touch with the policy and achievements of the organization. He writes in no nonpartisan spirit, however, although he assures us that he has made a conscientious endeavor to be a faithful reporter of the facts and on the whole his book is a great deal more than special pleading. The style is interesting and the author's sketch of an extremely significant movement will well repay the time any student of contemporary American politics may spend in reading it.

Social Theory, by G. D. H. Cole of Magdalen College, Oxford, is one of the newer books on the list of Messrs. Frederick A. Stokes Company (220 pp.). It contains chapters on such topics as "The Forms and Motives of Association," "Government and Legislation," and "The Atrophy of Institutions."

A small volume entitled: *A More Christian Industrial Order*, by the Rev. Henry Sloane Coffin, has been published by the Macmillan Company (86 pp.).

Professor F. T. Carlton of De Pauw University has brought out, through Messrs. D. Appleton & Co., a short history of the American labor movement under the title of *Organized Labor in American History*.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

BEATRICE O. ASHTON AND CLARENCE A. BERDAHL

AMERICAN GOVERNMENT AND PUBLIC LAW

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